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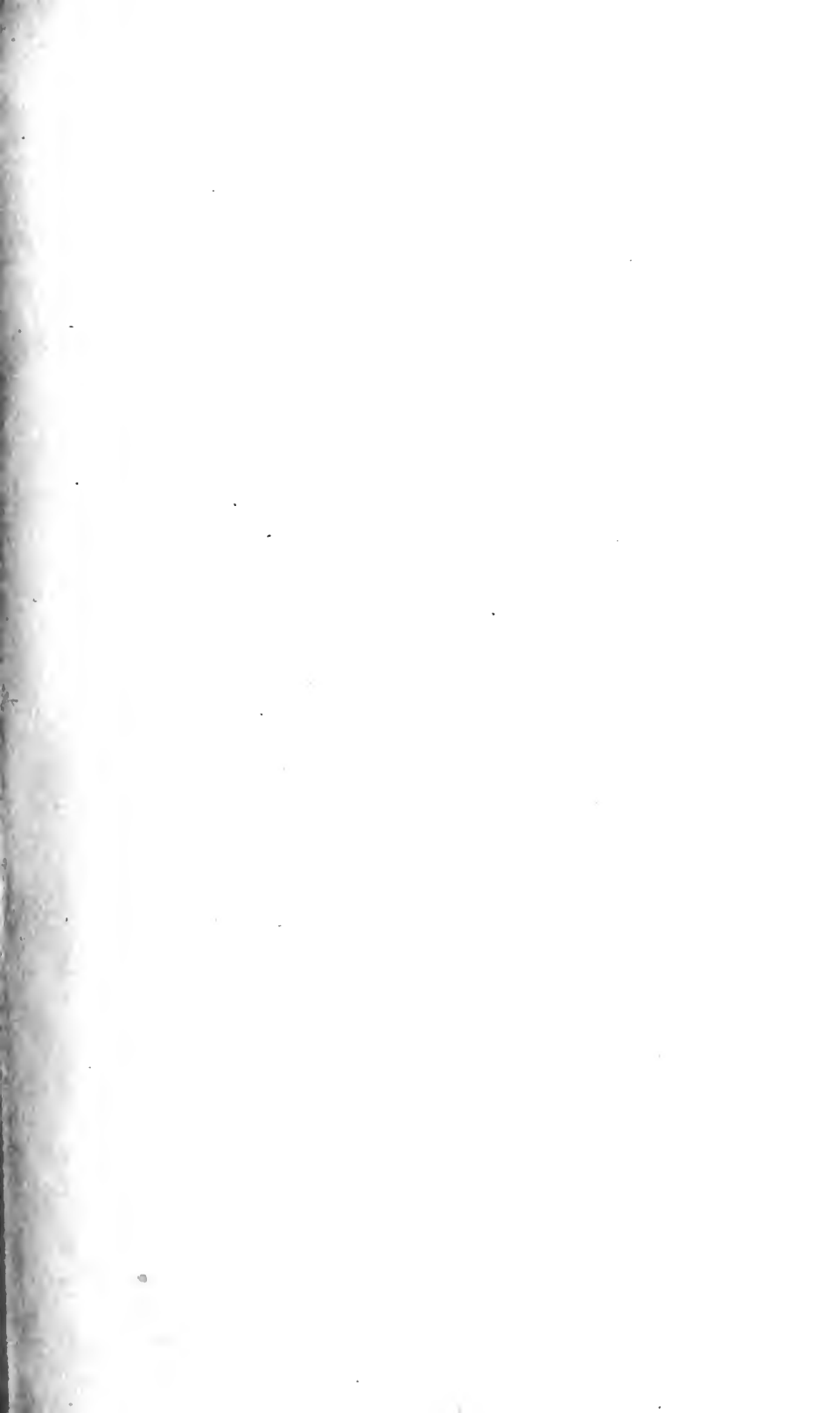
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2514
No. 11839

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

TOM C. CLARK, Attorney General of the United States
and WILLIAM A. CARMICHAEL, District Director,
Immigration and Naturalization Service, United
States Department of Justice, District 16,

Appellants,

vs.

ALBERT YUICHI INOUE, MIYE MAE MURAKAMI,
TSUTAKO SUMI and MUTSU SHIMIZU,
Appellees.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United States
for the Southern District of California
Central Division

FILED

APR 27 1948

PAUL P. O'BRIEN,

CLERK

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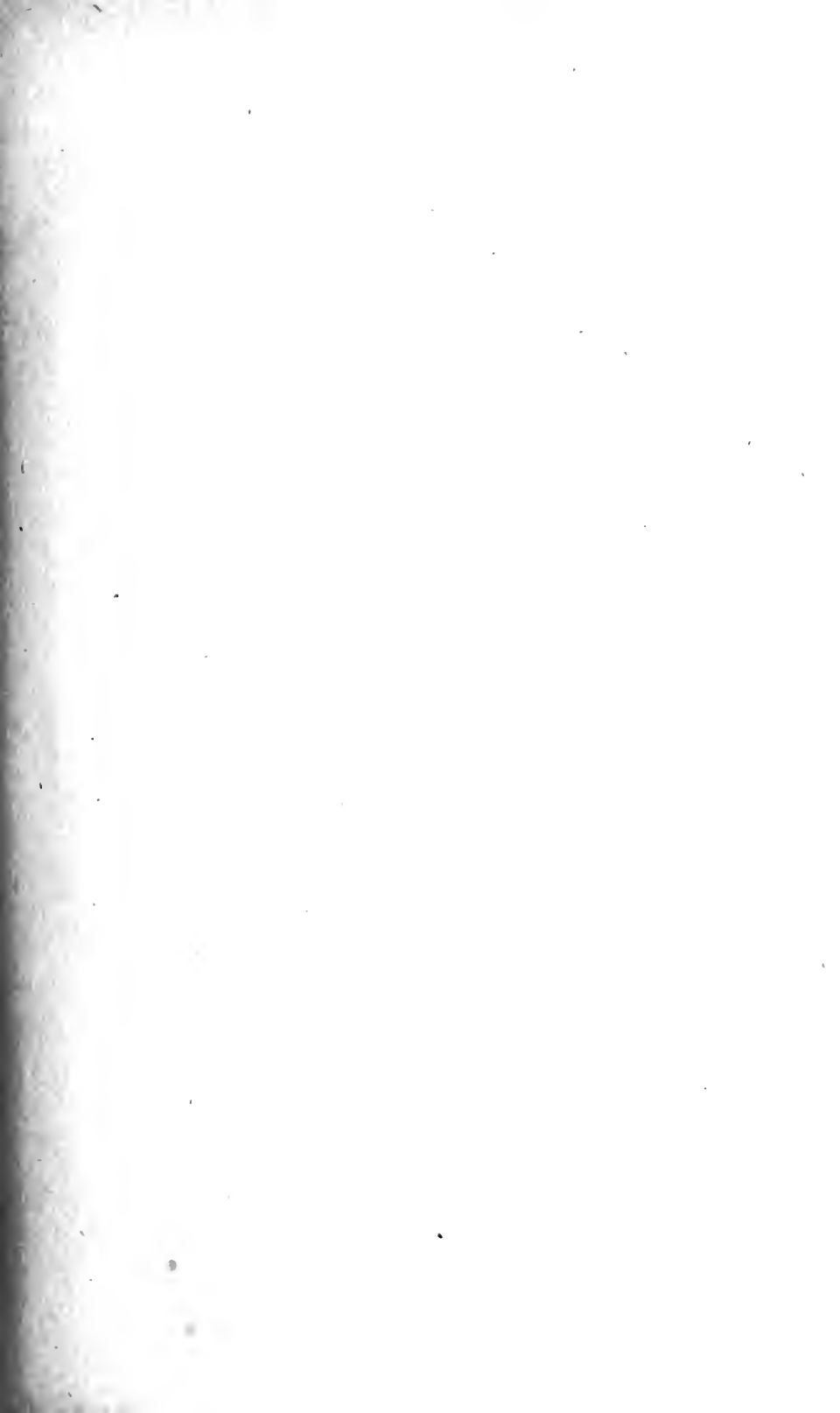
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Upon Appeal From the District Court of the United States
for the Southern District of California
Central Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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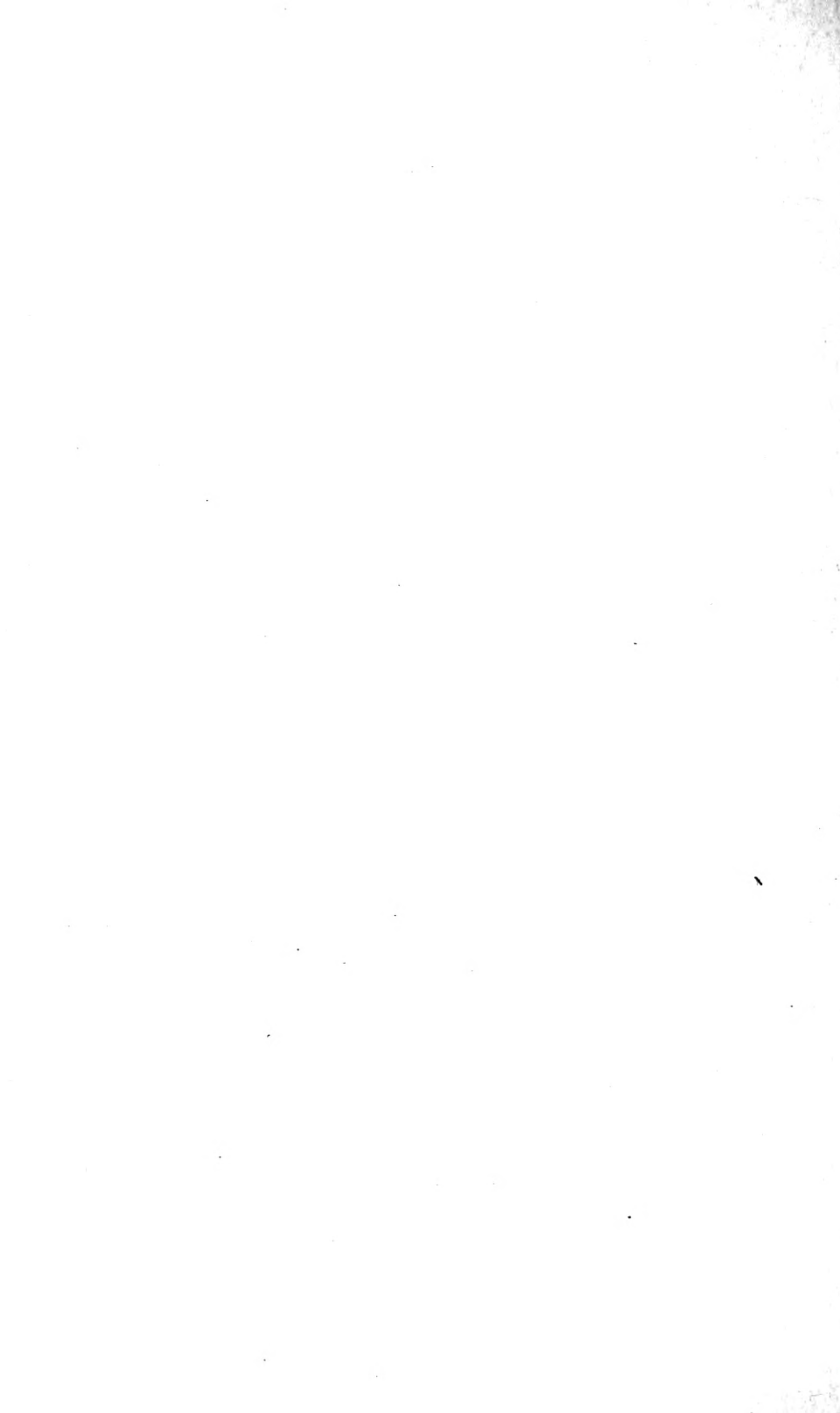
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In the District Court of the United States in and for the
Southern District of California
Central Division

No. 5945-W

ALBERT YUICHI INOUE, MIYE MAE MURA-
KAMI, TSUTAKO SUMI and MUTSU SHIMIZU,
Plaintiffs,

vs.

TOM C. CLARK and ALBERT DEL GUERCIO,
Defendants.

AMENDED COMPLAINT UNDER NATIONALITY ACT

Come now the plaintiffs, Albert Yuichi Inouye, Miye Mae Murakami, Tsutako Sumi and Mutsu Shimizu, and complain of the defendants as follows:

I.

Plaintiffs are citizens of the United States of America, born in the United States, and are permanent residents of the Southern District of California. They are of Japanese ancestry but are neither under the laws of Japan, nor of the United States nor have ever been natives, citizens, denizens or subjects of Japan, or of any hostile nation or government, within the terms of Title 50, United States Code, Sec. 21 or Sec. 22, further allegations of fact pertaining thereto, being set forth hereinafter.

II.

Defendant Albert Del Guercio, is and at all times mentioned herein was, the duly appointed and acting District

Director of [2] The Immigration and Naturalization Service of the United States Department of Justice for the Southern District of California and as such, is the head of said agency for said Southern District.

The defendant, Tom C. Clark is the Attorney General of the United States; and as such, he is the head of the United States Department of Justice.

III.

The plaintiffs, by virtue of their birth in the United States and their United States citizenships as aforesaid, are nationals of the United States, and the plaintiffs, claim the rights and privileges of nationals of the United States; the defendants deny that the plaintiffs are nationals of the United States and have denied the plaintiffs rights and privileges as nationals of the United States; and have announced that the plaintiffs do not possess United States nationality or citizenship.

IV.

This Court has jurisdiction herein by virtue of Title 8, United States Code, Sec. 903.

V.

In 1944 and/or 1945, the plaintiffs renounced their citizenship, but said renunciations were not of their own free and voluntary acts; but on the contrary, were the result of undue influence, mistake, misunderstanding and coercion.

VI.

The plaintiff, Albert Yuichi Inouye, formerly resided in Canoga Park, California. He is nineteen (19) years of age, born May 30, 1927 in Berros, San Luis Obispo

County, California. He attended public schools in West Los Angeles, California. On April 28, 1942, he was evacuated with his family from West Los Angeles to the Manzanar Relocation Center, California. Prior to his evacuation, he had been active in the Y. M. C. A.; the Christian Church; and in athletics in the junior high and high schools. He [3] had participated in and contributed to the Infantile Paralysis Drive, the Tuberculosis Drive and the Waste Paper Drive and had purchased War Saving Defense Stamps. While at Manzanar Relocation Center, he was active in the American Red Cross Project and the U. S. O. He went to school at the Manzanar Relocation Center.

In March, 1945, while seventeen (17) years of age, he applied for renunciation and signed the application form furnished by the Department of Justice on July 9, 1945 a few months after he had become eighteen (18) years old. He withdrew his renunciation on August 23, 1945. His withdrawal was of no avail, and on September 8, 1945, he was transferred to the Santa Fe Detention Camp, New Mexico. While there, he was accorded another hearing before a representative of the Department of Justice and after proof of his loyalty to the United States had been amply evidenced, was released in April, 1946.

Soon after his release from the Santa Fe Detention Camp as aforesaid, as further demonstration of his loyalty to the United States, he volunteered for the United States Army and was ordered to report for overseas duty to Camp Stoneman, California, on November 2, 1946. On November 15, 1946, he was ordered to the Presidio of Monterey, California, for Military Intelligence Language School where he is presently stationed.

VII.

The plaintiff, Miye Mae Murakami, presently resides in Burbank, California. She is 29 years of age, born November 18, 1917, in Mountain View, California. She attended the public schools in Menlo Park, California, and afterwards assisted her parents on their farm in Santa Clara, California. She married her present husband, a Japanese alien, on September 16, 1939, in Santa Monica, California. She was evacuated with her family from Santa Monica, California, on April 28, 1942, and sent to Manzanar Relocation Center, California. On February 26, 1944, she was transferred to Tule Lake Center under [4] the "segregation program" as a result of her husband having applied for repatriation.

Due to her extreme reluctance to renounce her citizenship, she applied for renunciation on or about the last day that that was possible, or in May, 1945. She received her notice of approval of said renunciation in January 1946. She later received a "mitigation hearing" as a result of which she was released from Tule Lake Center on March 5, 1946, going first to Hawthorne, California, then to Santa Monica, California, and presently residing in a trailer in Burbank, California.

She renounced her citizenship because of the reports and statements uttered to her that all American citizens and Japanese aliens would be segregated into different camps during the war regardless of age, marriage or family hardships. She also renounced her citizenship in the belief that this was necessary not to be separated from her husband. She further renounced her citizenship because she feared being assaulted unless she did so renounce. The fascistic strong arm tactics used by the members of the Hoshidan in the Ward at Tule Lake

Center where she lived kept the whole Ward in a constant state of hysteria, tension, fear and fright and reports of stabbings, assaults in the dark, and invasions by members of the Hoshidan even into the women's latrines compelled her, for her own safety and welfare, to renounce her citizenship.

VIII.

The Plaintiff, Tsutako Sumi presently resides in West Los Angeles, California. She is 32 years of age, born October 13, 1914 in Los Angeles, California. She is married to a Japanese alien and is the mother of three small children. She was evacuated in April, 1942, to the Manzanar Relocation Center, transferring to the Tule Lake Center under the "segregation program" on February 27, 1944, after her husband had applied for repatriation. She applied for renunciation in March, 1945, and was given a hearing [5] a few months later. She reactivated her notice of approval of said renunciation on October 8, 1945. After another hearing termed a "mitigation hearing" she was released from Tule Lake Center in February 23, 1946, and left said Center to join her husband who had left said Center earlier.

She resided in Block 75 in Tule Lake Center where the most rabid pro-Japanese elements resided. She lived in a daily atmosphere of fears, threats, apprehensions, wild distorted reports and rumors. In their attempts to force everyone in the Block and Ward to renounce their citizenship, the Hoshidan harangued her husband who was the block manager of Block 75 and hence ineligible to be a member of any organization, to have him force his wife to renounce her citizenship. Tremendous pressure was exerted upon the husband and finally after having been

the subject of ridicule, constant pressures and influences, he finally coerced and compelled his wife to renounce her citizenship against her will and desires.

IX.

The plaintiff, Mutsu Shimizu, presently resides in Burbank, California. She was born in Los Angeles, California, on July 4, 1914. She was sent to Japan by her parents at the age of six years where she remained until she was 16 years of age, and returned to the United States in 1931, after which she attended the public schools in Venice, California. She married her present husband, a Japanese alien, in 1938. She moved from Venice, California, to Hawthorne, California, from whence she moved to San Gabriel, California, and pursuant to the General Exclusion Order of Lt. Gen. John L. DeWitt, was evacuated to the Tulare Assembly Center. She, with her family, was then ordered transferred in September, 1942, to the Gila Rivers Relocation Center and in the "segregation program," was again transferred to the Tule Lake Center after her husband had applied for repatriation. She is the mother of three children, all born in the United States, and hence, American citizens. [6]

In December, 1944, she applied for renunciation, was accorded a hearing in January, 1945, and received word in October, 1945, from the Department of Justice that her renunciation had been approved. In November, 1945, she was accorded a "mitigation" hearing and upon showing of no disloyalty to the United States was ordered released. She left the Tule Lake Center on February 22, 1946, and came to Burbank, California, where she presently resides.

She renounced her citizenship because of the tremendous pressure and influence aggravated by threats and

rumors of threats, killings, stabbings imposed upon those who did not renounce and because, furthermore, she was informed that an American citizen who was married to an alien Japanese could not join or remain with their spouse unless they renounce their citizenship when such two groups were going to be separated in different camps during the War. Although her husband was an active leader of a pro-Japanese group, she never truly desired to renounce her citizenship. Her brother and relatives have all served either honorably in the United States or assisted directly in the war effort, one of her brothers having served in Korea, her other brother having taught the Japanese language to the Army at Stillwater College, Oklahoma, and her two brothers-in-law having served overseas in the armed forces.

X.

On the dates as aforesaid, the plaintiffs filled out forms of renunciation of citizenship under Title 8, United States Code, Sec. 801 (i) and the Rules and Regulations adopted by the Department of Justice, and designated as Sec. 316.1 to 316.9.

Said applications by the plaintiffs were accepted by the Attorney General as aforesaid, in the course of which the plaintiffs were denied the right of counsel and of confrontation and cross-examination of witnesses, and had neither the right nor opportunity to subpoena witnesses in their behalf. Said applications were [7] accepted by the Attorney General and/or his subordinates and agents, in reliance upon information adverse to the plaintiffs and not communicated to, or known to, the plaintiffs; and the plaintiffs were never given an opportunity to meet said adverse information.

Said acceptance of said applications, moreover, was made, based upon secret orders and/or instructions made by the Attorney General to his subordinates containing standards or so-called standards for the exercise of discretion by said subordinates and/or Attorney General, which said standards, instructions and/or orders were not communicated to the plaintiffs, and which were unavailable to the plaintiffs; nor were these orders instructions and/or standards made public in any form, nor published in the Federal Register.

XI.

Plaintiffs are citizens of the United States by virtue of the Fourteenth (XIVth) Amendment, and such citizenship may not be renounced or taken away.

XII.

Title 8, United States Code, Sec. 801 (i) on its face and as applied, is unconstitutional, because it deprives the plaintiffs of liberty without due process of law under the Fifth (Vth) Amendment and of the right to be and remain a citizen under the Fourteenth (XIVth) Amendment.

Title 8, United States Code, Sec. 801 (i) is unconstitutional in that the authority to approve renunciations may be granted, if at all, only to the judicial branch of the government.

Moreover, the renunciation procedure is unconstitutional in that it is an unlawful delegation of legislative powers to the executive branch of the government; and furthermore, said renunciation procedure is an attempt to enforce an act of Congress which is vague and indefinite as to the standards to be followed by which renunciation is to be effected. [8]

For a Second Cause of Action Plaintiffs Allege as Follows:

I.

Plaintiffs Repeat the Allegations of Paragraphs I, II, III, IV, V, X, XI, and XII of this Complaint.

II.

Prior to February, 1942. Plaintiffs had never been questioned by any police, military or investigatory authority; had never been arrested, charged with any crime or offense, or summoned or requested to appear in or to supply information to, any court, or police, military or investigatory authority: and had been at all times, and had at all times been treated, as loyal and law-abiding American citizens.

III.

Prior to February, 1942. Plaintiffs had at all times been treated by local, State, and Federal authorities as having the same status as American citizens of any other ancestry, had never been discriminated against by any governmental authority on the basis of such ancestry, and no actions had been taken by any governmental authority indicating that their ancestries could or would be causes for discriminations against them.

IV.

With the exception of Plaintiff, Mutsu Shimizu, none of the Plaintiffs had ever made trips to Japan, and none of the plaintiffs had ever made any attempt to secure Japanese citizenship, or made any attempt or shown any desire to renounce their American citizenships.

V.

By a series of orders issued by Lt. Gen John L. DeWitt from February to July, 1942, all American citizens of Japanese ancestry, including the plaintiffs, were ordered from their places of residence, effective six days after the issuance of the order; such orders were applicable to citizens of Japanese ancestry regardless [9] of their past conduct, habits, characteristics, or loyalty; such orders were based solely on ancestry and no citizens of other ancestries were similarly treated.

VI.

Citizens of Japanese ancestry, including the plaintiffs, who were ordered excluded, as alleged in Paragraph V, were ordered to report for evacuation by military authorities; they were not informed of their destination or of the possible duration of their exclusion; they were transported under armed guard to hastily-constructed places of detention; they were allowed to take with them to such places of detention only a limited number of personal possessions; they were moved under armed guard from the original places of detention to other such places without being informed, at any time, of the probable duration of their incarceration; and they suffered privations in all such places of detention.

Such citizens of Japanese ancestry were able to secure their release from detention only upon condition that they make specified reports to an agency of the government of the United States and upon condition that they remain in the constructive custody of the Government of the United States; and those who secured their release sub-

ject to these conditions were on occasion subjected to acts of violence, due to prejudice resulting in part from the Government's discriminatory measures of exclusion and detention hereinbefore described.

VII.

Each of the plaintiffs were found by the War Relocation Authority to be free of any suspicion of disloyalty. Each of the plaintiffs were detained subsequent to such finding, and their detentions subsequent to such findings were illegal.

VIII.

Subsequent to the enactment in July, 1944, of the law authorizing the Attorney General to approve renunciations of citizenships as [10] aforesaid, it was made known throughout the War Relocation Authority's detention camps by agents of the Attorney General and of the War Relocation Authority that citizens of Japanese ancestry in such camps could give up their American citizenship by filling out forms to be given to them by the Attorney General. Plaintiffs were in the War Relocation Authority's camps at the time renunciation was thus proposed.

IX.

The Government did not, by supplying sufficient information in such camp, or other means, prevent the spread in such camp, of mis-information, rumor, conjecture, and fear tending to cause American citizens of Japanese ancestry, including the plaintiffs, to renounce their American citizenships.

X.

Each of the plaintiff's statement of intent to renounce their citizenships were made while in such camps.

XI.

Each of the plaintiff's state of mind which induced them to make such statement was influenced to a substantial degree by the Government's acts of racial discrimination specified in Paragraphs VI and VII of the Second Cause of Action of this Complaint; by their treatment by the Government during their detentions; and by conditions and mis-informations in such camps, as specified in Paragraph IX, to which the Government caused them to be subject.

XII.

At the time of the proposal of renunciation in the Fall of 1944 and at the time of the purported withdrawal of plaintiffs' citizenships by the Attorney General, on each of the dates as aforementioned, there was no danger of invasion of the United States by Japan; restrictions imposed by the Government of the United States on the civilian population of the United States for the purpose of preventing espionage and sabotage were being re- [11] moved; all local, State and Federal agencies for the maintenance of law and order were functioning; and no emergency justified the withdrawal of plaintiffs' citizenships.

XIII.

The facts alleged in all of the foregoing paragraphs of the Second Cause of Action were well-known to the Attorney General at the time he purported to revoke plaintiffs' citizenships.

XIV.

The revocation of plaintiffs' citizenships, on the basis of an intention to renounce, influenced to a substantial

extent by the Government's acts and by circumstances to which each of the plaintiffs were subject by virtue of the Government's acts, as alleged in IX, X and XI of the Second Cause of Action of this Complaint, was unfair, unreasonable, and a violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

XV.

No announcement or proposal with regard to renunciations of citizenship such as was made to American citizens of Japanese ancestry, as alleged in Paragraph VIII of the Second Cause of Action, was made to American citizens of non-Japanese ancestry, including those American citizens of non-Japanese ancestry who had been convicted of sedition, espionage, sabotage, or other crimes involving national security and including those American citizens of non-Japanese ancestry who had been ordered excluded by military authorities from their places of residence purportedly because of the danger that they would commit espionage and sabotage.

XVI.

The proposal of renunciation to American citizens of Japanese ancestry, including the plaintiffs, and the revocation of plaintiffs' citizenships constituted an unreasonable discrimination on the basis of race in violation of the due process clause of the Fifth Amendment to the Constitution of the United States. [12]

Wherefore, the plaintiffs, and each of them pray for the following relief:

(1) A judgment adjudging the plaintiffs' and each of their applications for renunciation, to be cancelled, null and void.

(2) A judgment that the plaintiffs, and each of them, are citizens and nationals of the United States.

(3) And the plaintiffs, and each of them, pray for such additional relief as to the Court may seem just and proper.

Dated: This 3rd day of February, 1947.

A. L. WIRIN and FRED OKRAND

By A. L. Wirin

Attorneys for Plaintiffs

ARTHUR GARFIELD HAYS

OSMOND K. FRAENKEL

NANETTE DEMBITZ

Of Counsel [13]

[Verified.]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Feb. 11, 1947. Edmund L. Smith,
Clerk. [14]

In the District Court of the United States in and for the
Southern District of California

Central Division

No. 5945-W

ALBERT YUICHI INOUYE,

Plaintiff,

vs.

TOM C. CLARK and ALBERT DEL GUERCIO,

Defendants.

STIPULATION

It is hereby stipulated by and between the parties hereto, that the plaintiff herein may be permitted to file an Amended Complaint in the above-entitled action.

A. L. WIRIN

Attorney for Plaintiff

JAMES M. CARTER

U. S. Atty.

RONALD WALKER

Asst. U. S. Atty.

Attorneys for Defendants

It is so ordered.

Dated this 14 day of March, 1946.

JACOB WEINBERGER

Judge of the U. S. District Court

[Endorsed]: Filed Mar. 14, 1947. Edmund L. Smith,
Clerk. [15]

In the District Court of the United States in and for the
Southern District of California

Central Division

No. 5945-W

ALBERT YUICHI INOUE, MIYE MAE MURA-
KAMI, TSUTAKO SUMI and MUTSU SHIMIZU,
Plaintiffs,

v.

TOM C. CLARK and ALBERT DEL GUERCIO,
Defendants.

ANSWER TO AMENDED COMPLAINT

Defendants, answering the complaint in the above-captioned cause:

I.

Deny that plaintiffs are citizens of the United States; admit that plaintiffs were born in the United States and are residents of the Southern District of California; admit that plaintiffs are of Japanese ancestry; and deny all other allegations of Paragraph 1 of the said complaint.

II.

Admit all allegations of Paragraph II of the said complaint.

III.

Deny that plaintiffs are nationals of the United States, and admit all the remaining allegations of Paragraph III of the said complaint. [16]

IV.

Neither admit nor deny the conclusion of law comprising Paragraph IV of the said complaint, regarding the

question of jurisdiction as a matter to be determined by the Court.

V.

Admit that each of the plaintiffs renounced his or her citizenship in 1944 or 1945, but deny that such renunciations were involuntary or the result of undue influence, mistake, misunderstanding, and coercion, or of any of these alleged determinants of their conduct.

VI.

As to plaintiff Inouye, admit his birth, age, residence, education, evacuation, application for renunciation, the approval thereof, his subsequent mitigation hearing, release, and departure from Santa Fe, all as alleged in Paragraph VI of the said complaint. Deny the allegation that plaintiff Inouye withdrew his renunciation on August 23, 1945; admit that plaintiff Inouye attempted to withdraw his renunciation on August 23, 1945, but that said attempted withdrawal was of no avail because the Attorney General had approved the renunciation on August 7, 1945. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of loyalty to the United States and therefore deny the same.

VII.

As to plaintiff Murakami, admit her birth, age, residence, education, marriage, evacuation, application for renunciation, the approval thereof, her subsequent mitigation hearing, release, and departure from the Tule Lake Center, all as alleged in Paragraph VII of the said complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments relative to the motives for her renunciation and therefore deny the same.

VIII.

As to plaintiff Sumi, admit her birth, age, residence, marriage evacuation, application for renunciation, the approval thereof, her [17] subsequent mitigation hearing, release, and departure from the Tule Lake Center, all as alleged in Paragraph VIII of the said complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments relative to the motives for her renunciation and therefore deny the same.

IX.

As to plaintiff Shimizu, admit her birth, age, residence in the United States, residence in Japan, education, marriage, evacuation, application for renunciation, the approval thereof, her subsequent mitigation hearing, release, and departure from the Tule Lake Center, all as alleged in Paragraph IX of the said complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments relative to the motives for her renunciation and therefore deny the same.

X.

Admit that all plaintiffs herein filled out forms renouncing their citizenship pursuant to Title 8, U. S. C. § 801(i), and that said renunciations were approved by the Attorney General, but deny that such approvals were based on information adverse to plaintiffs which was not known to them, and deny that there was any occasion for or denial of counsel or of confrontation and cross-examination of witnesses or the subpoenaing of witnesses. Defendants admit that the instructions by the Attorney General to the duly appointed officers who conducted the renunciation proceedings were not disclosed to plaintiffs

nor otherwise made public, and deny that there was any occasion or legal requirement for such disclosure.

XI.

Deny all allegations of Paragraph XI of the said complaint.

XII.

Deny all allegations of Paragraph XII of the said complaint.

Defendants, Answering the Allegations in the Second Cause of Action Alleged Herein: [18]

I.

Repeat the above answers to Paragraphs I, II, III, IV, V, X, XI, and XII of the complaint.

II.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of loyalty and good character in Paragraph II of the complaint herein, and therefore deny the same.

III.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of discrimination in Paragraph III of the complaint herein, and therefore deny the same.

IV.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph IV of the complaint herein, and therefore deny the same.

V.

Admit the allegations in Paragraph V of the complaint herein.

VI.

Admit the specific allegations in Paragraph VI of the complaint herein, except the averment that the alleged acts of violence were due to prejudice resulting in part from the Government's discriminatory measures of exclusion and detention; as to this averment, defendants are without knowledge or information sufficient to form a belief as to the truth thereof and therefore deny the same.

VII.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment of loyalty in Paragraph VII of the complaint herein, and therefore deny the same. Defendants admit that plaintiffs were detained, but deny that such detentions were illegal or that any plaintiff was detained against his or her will after a finding that he or she was free of any suspicion of disloyalty. [19]

VIII.

Admit that while plaintiffs were in the War Relocation Authority camps announcement was then made that citizens of Japanese ancestry could, upon approval of the Attorney General, renounce their United States citizenship, but deny that plaintiffs, or any of them, were in any manner encouraged to renounce by agents of the Attorney General or of the War Relocation Authority.

IX.

Upon information and belief, defendants admit the spread of misinformation, rumor, conjecture, and fear throughout the camps, as alleged, but deny that the prevention of such spread was possible, and that reasonable efforts were not made both by the War Relocation Authority and the Department of Justice to prevent such

spread when the situation came to their attention, but admit, on information and belief, that such efforts were not in all respects successful.

X.

Admit the allegations in Paragraph X of the complaint herein.

XI.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph XI as to the state of mind of plaintiffs, or as to the factors which induced such state of mind, and therefore deny the same. Defendants deny that the Government caused plaintiffs to be subject to any misinformation.

XII.

Neither admit nor deny the allegations in Paragraph XII of the complaint herein on the ground that they are irrelevant to any issues raised. Defendants assert that the permission to plaintiffs to renounce voluntarily was not predicated on the existence of any emergency or threatened invasion.

XIII.

Deny the allegations of Paragraph XIII of the complaint herein. [20]

XIV.

Deny the allegations of Paragraph XIV of the complaint herein.

XV.

Admit the allegations in Paragraph XV of the complaint herein and assert that the reason why no announcement or proposal with regard to renunciation of citizenship was made to American citizens of non-Japanese ancestry was that only from American citizens of Japanese

ancestry were sufficient numbers of requests to be permitted to renounce received to warrant the giving of information as to how such renunciations could be accomplished.

XVI.

Deny the allegations in Paragraph XVI of the complaint herein.

And Further Answering the complaint herein, defendants show:

First, that renunciations were approved by the Attorney General only after the following procedural steps:

1. A written application for permission to renounce signed by the prospective renunciant was required to be filed in each case.
2. The submission of a formal statement of renunciation, upon which a hearing was held by an officer specially designated by the Attorney General, prior to its approval.
3. Approval by the Attorney General based upon the report and recommendation of such hearing officer.

Second, at his hearing, each plaintiff appeared in person before the designated hearing officer in a private interview at which no other person of Japanese ancestry was present.

Third, that it was the primary purpose of the hearing given each plaintiff to make certain that he fully understood the consequences of his act and undertook them voluntarily. To this end the hearing officer in each case was instructed to and did inform him fully that citizenship once lost could not be regained, and that if he renounced and returned to Japan, he could in all probability never return to the United States.

Fourth, that each plaintiff herein individually filed a request to be premitted to renounce, having previously written to the Department of [21] Justice requesting the required forms; and that after full explanation and hearing, each plaintiff herein reiterated his desire to renounce and filled out the requisite renunciation form after opportunity to acquaint himself with the relevant facts and consequences of his act.

Fifth, that plaintiffs made no effort to withdraw their renunciations until after approval of said renunciations by the Attorney General of the United States.

Sixth, that defendants accordingly assert that, contrary to the allegations of the complaint herein, plaintiffs were not in fact coerced or led by any form of duress or mistake to renounce their citizenship, but were voluntary participants in the movement for renunciation with full knowledge of the nature and consequences of their acts.

Wherefore, defendants respectfully submit that the complaint herein should be dismissed and the relief prayed for therein be denied.

PEYTON FORD

Acting Assistant Attorney General

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

Attorneys for Defendants

ENOCH E. ELLISON

Attorney, Department of Justice

Of Counsel

[Endorsed]: Filed Jun. 2, 1947. Edmund L. Smith,
Clerk. [22]

[Title of District Court and Cause]

NOTICE ON HEARING FOR MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS

To the Defendants Herein, and to Messrs. Al Wirin and Fred Okrand, Their Attorneys:

You, and each of you, will please take notice that on Monday, July 14th, 1947, at the hour of 10:00 o'clock a. m. defendants will move the above-entitled Court for summary judgment on behalf of defendants and against plaintiffs in accordance with the written motion appended hereto.

Dated: This 29th day of May, 1947.

PEYTON FORD

Acting Assistant Attorney General

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

Attorneys for Defendants

ENOCH E. ELLISON

Attorney, Department of Justice
Of Counsel [23]

[Title of District Court and Cause]

MOTION FOR SUMMARY JUDGMENT ON
BEHALF OF DEFENDANTS

Come now the defendants above named and move the Court for a summary judgment in their favor and against plaintiffs.

The motion will be made upon the ground that the amended complaint fails to state a claim against defendants upon which relief can be granted and upon the further ground that the pleadings and admissions on file together with the affidavits appended hereto show that the only justiciable question presented is whether plaintiffs continue to be citizens of the United States notwithstanding their renunciation of citizenship; that as to the validity of such renunciations, there is no genuine issue as to any material fact; and that the defendants are entitled to judgment as a matter of law.

The motion will be based upon the records and files in said action, upon the affidavits of Joseph J. Shevlin, Charles M. Rothstein, Rosalie Hankey, and John L. Burling, and the memorandum of points and [24] authorities in support of said motion appended hereto.

Dated: This 29th day of May, 1947.

PEYTON FORD

Acting Assistant Attorney General

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

Attorneys for Defendants

ENOCH E. ELLISON

Attorney, Department of Justice

Of Counsel [25]

Chicago, Illinois, Cook County—ss.

AFFIDAVIT

Rosalie Hankey, being sworn, deposes and says as follows:

I am a graduate student of anthropology and am presently employed by the Department of Anthropology in the University of Chicago as Assistant in Anthropology. In July of 1943 I entered the employ of the Evacuation Resettlement Study of the University of California at Berkeley, California. At this time I was 31 years old.

This Study was an organization especially set up by the University of California with funds donated by the Giannini and Rockefeller Foundations to observe and record from the sociological standpoint the evacuation of persons of Japanese ancestry from the Pacific Coast ordered by Lieutenant General John L. DeWitt and the social phenomena which resulted therefrom. This Study was under the direction of Dr. Dorothy S. Thomas, a professor at the University of California. The Study employed a number of students of sociology and anthropology who acted as observers in the several assembly centers and relocation centers and also employed students of Japanese ancestry, who themselves were evacuated, to act as reporters. I was at first assigned by Dr. Thomas to the Gila Relocation Center and began my work there in July of 1943. The nature of my duties there included the recording of events and evacuee attitudes, and the preparation of reports describing and analysing the sociological phenomena. On February 1, 1944, after seven months of almost continuous residence at the Gila Center, I was directed by Dr. Thomas to visit the Tule Lake

Center in Modoc, California to make a preliminary survey of the attitudes of the segregated evacuees. Approximately three weeks before this visit, the jurisdiction of the Tule Lake Center had been returned to the War Relocation Authority by the Military. At this visit I remained at the Tule Lake Center for two days. I made two succeeding visits to the Tule Lake Center: from March 14 to March 23, 1944, and from April 12 to April 17, 1944. Between these visits I returned to the Gila Center. On May 13 of 1944 I took up permanent study in the Tule Lake Center and remained there until May 9, 1945, except for three brief trips to consult with Dr. Thomas. Therefore, I observed substantially all of the sociological developments leading up to the renunciation of citizenship and was at the Tule Lake Center during most of the renunciations themselves. [26]

During all of this time, by the techniques described below, I assembled very full field notes on the renunciation program and submitted these to the Evacuation and Resettlement Study. I also submitted voluminous reports on evacuee attitudes toward renunciation. The University of California has recently published the first volume of its studies, which volume relates specifically to those evacuees who renounced their citizenship. The book was put into final form by Dr. Dorothy S. Thomas and Richard Nishimoto, who was the Study's observer in the Colorado River Relocation Center. To the best of my knowledge and belief, insofar as it deals with events taking place at the Tule Lake Center after segregation, this book is based entirely on my field notes and the manuscripts which I submitted, except for certain information gained after the renunciation program had been completed from

talks with evacuees who were there at the time and from letters written by evacuees after the renunciation program was complete.

For the above reasons and because of the techniques employed by me, hereinafter described, it is my belief that I am qualified to speak as an expert on the social pressures obtaining within the Tule Lake Center prior to and during the renunciation program from December 1944 through May 1945.

I obtained information for my field notes in the following manner:

The accumulation of data on evacuee attitudes presented many difficulties to a person of Caucasian ancestry. The experiences of evacuation and the confining life of the Centers had intensified the pre-evacuation in-group solidarity of the Japanese residents. The WRA administration and its staff members, the visible representatives of authority, were commonly held responsible by the evacuees for the great variety of inconveniences, annoyances, and hardships of Center life. Therefore, the WRA staff, in general was regarded with considerable antipathy. The strong in-group sentiments of the Japanese and their dislike of the WRA administration were, in part, responsible for an additional phenomenon which increased the difficulties of sociological investigation. This was an extraordinarily powerful evacuee fear of being considered a stool-pigeon. This fear was coupled with a hatred of persons alleged to be stool-pigeons, i. e., traitors to their own people. Such persons were called, inu, a Japanese [27] word meaning dog or informer. Any evacuee who appeared to be on markedly friendly terms with a Caucasian staff member or was observed visiting the Ad-

ministration buildings when he had no specific business there exposed himself to being called an inu.

The inu phenomenon was a potent means of social control in all of the Centers of which I have knowledge. In Tule Lake it played a very significant part in the sociological developments which preceded the renunciation of citizenship. It was largely responsible for the fact that terrorists and persons guilty of violent assault were not denounced to the authorities. To be stigmatized as an inu brought social ostracism which in the crowded and confined life of the Centers was painful in the extreme. All meals were served in public mess-halls. An alleged inu, seating himself at a table, was greeted with an uncomfortable silence and meaningful glances. If he entered a latrine or boiler room, which were common places for gossip and discussion, he found that friendly talk or argument stopped with his appearance. Because of the lack of privacy which Center conditions imposed, he could find no escape and was reminded of his despised position many times every day. During a period of tension, he might be assaulted and severely beaten. In the Tule Lake Center at least seven men alleged to be inu were beaten. In the same Center, Mr. Hitomi, alleged to be an inu, was murdered. If, therefore, an evacuee or a segregée held opinions contrary to those which were considered the prevailing sentiment, he was strongly inclined to keep these opinions to himself or to voice them only to trusted intimates. He was also inclined to avoid the appearance of intimacy with WRA staff members.

I was able to substantially overcome the handicaps to sociological investigation outlined above in the follow-

ing manner. To my informants I stressed the fact that I was not a member of the WRA administration but a student, hired by scholars who were interested in preparing an accurate account of events within the Japanese Centers. I stated that I would not show my data to the WRA administration and would not reveal the names of my informants. These contentions were not believed until my informants had the opportunity to observe that I had little association with WRA staff members and [28] that I did not attempt to pry into those matters which evacuees were reluctant to discuss with a Caucasian. In the Gila Relocation Center I began my field work by initiating a series of innocuous investigations, e. g., how Center life was affecting the children. This and similar projects gave me the opportunity to make frequent visits to the apartments of evacuees. After this program had been continued for several months, certain informants made overtures of friendship. They then began to give me an informal education on the genuine attitudes of the residents which often differed greatly from the stereotyped attitudes generally reserved for Caucasians. I gained intimate knowledge of those matters which a member of the in-group was morally obliged not to reveal to outsiders. When certain of these friendly informants began to give me a considerable amount of their time, I offered to pay them. This offer was refused. The situation which resulted put me under an ethical obligation. I was obtaining information through friendship and I had no means of recompensing informants except by rigorously observing the taboos of the in-group, i. e., keeping my promise that I would reveal no information given to me. This process was cumulative and, in time, I was given information of an extraordinary nature. In Tule Lake

a self-avowed ardently pro-Japanese group determined to circulate one of their petitions without asking permission of the WRA administration. They feared that they would be denied permission, since a few weeks before, the WRA had emphatically informed them that it did not intend to embark on the program they sponsored. One of the most influential leaders of the group sponsoring the petition, allowed me to read it several days before it was circulated and described the pressure his group intended to apply to residents who did not wish to sign. In Tule Lake evacuee informants also gave me the name of the man who was alleged to control a gang of terrorists. This gang, I was told, had committed a series of assaults upon the so-called inu (stood-pigeon). These informants did not give this information to the WRA administration or, so far as I know, to the police. Moreover, a Japanese informant who was severely beaten, assured me that the aforementioned gang of terrorists was responsible for the assault. Previously, he had refused to name his [29] assailants to the WRA Internal Security. I did not reveal this, and much other information of similar character, to the authorities. Because of this policy I was able to obtain data which, I believe, far exceeds in accuracy and reliability the information gained by most Caucasians who were in contact with the Japanese in the Centers.

I was, moreover, able to develop excellent rapport with certain leaders of the pro-Japanese pressure groups. The parent pressure group I shall call the Resegregation Group. It was also known at various times as the Saikakuri Seigan and the Sokuji Kikoku Hoshi-dan. Membership in this group was by families. To the best of my

knowledge, adult aliens and citizens and also minor children were considered members. In August of 1944 this body sponsored an auxiliary body for young men. This auxiliary body I shall call the Young Men's Fatherland Group. It was also called at various times the Sokoku Kenkyu Seinen-dan and the Hokoku Seinen-dan. Most of the members of this auxiliary body were to the best of my knowledge citizens of the United States. From May of 1944 until his internment in December of 1944 I was a regular visitor at the apartment of the man who, in my opinion, was the most influential leader of the Resegregation Group. He was also one of the two advisors to the Young Men's Fatherland Group and was an Issei. From July of 1944 until his internment in December of 1944 I frequently visited the other advisor to the Young Men's Fatherland Group who was a Nisei about 45 years old. This man was also alleged to be the leader of a gang of terrorists who assaulted persons who criticized either of the groups. I was also very well acquainted with and frequently visited four additional influential leaders of those groups. I was casually acquainted with others.

In this document it will be cumbersome to state specifically whether an informant was a member of one or the other group. The organizations were most intimately related and many or most of the members of the Young Men's Fatherland Group were members of the Resegregationist Group. On the other hand, older men, almost all of whom were Issei, advised the Young Men's Fatherland Group and, in my opinion, formed most of the policies of this youths' organization.

In addition I also developed good rapport with the chairman and other members of the body which was re-

sponsible for the much publicized demonstration of November 1, 1943. Many of these men later became very hostile to the aforementioned Resegregation Group. [30]

In addition to the persons described above I consulted a large number of other informants, some of whom were hostile to the Resegregation Group, some of whom disapproved of the group, and some of whom attempted to remain neutral. Some of these informants were nominal members of the Resegregation Group and some were not. Among my informants were Issei, Nisei and Kibei. I was, in fact, the only Caucasian who, in substance, made daily visits to the apartments of the Japanese residents of Tule Lake Center. I was also one of the very few who regularly entered the Center on foot and without an escort.

Maintaining contact with my informants in the face of the prevailing evacuee fear of being thought an inu required much tact and patience. I carefully arranged my visits so that I would not be observed by neighbors. I paid many visits during inclement weather when most of the residents remained indoors. The frequent severe dust storms, the bitter winter winds, and the thaws which rendered parts of the Center nearly impassable to a person not wearing heavy boots, provided ample opportunity for such visits. During periods of extreme community tension and fear, such as that which followed the murder of Mr. Hitomi, I corresponded with informants. In fact, after this murder one of my informants warned me to stay out of the center because the alleged gang leader had boasted that he intended to kill a Caucasian, and I, who entered the remote parts of the Center without escort, was particularly vulnerable. In my opinion, the fact that

Tule Lake was a large community and that, except for the Resegregation Group it was socially disorganized to the extent that residents were inclined to confine their social activities to the blocks in or near which they lived, gave me a distinct advantage. Informants, in general, had little opportunity to discover who my other contacts were. I revealed no names. If, therefore, I visited an ardent member of the Resegregation Group and appeared to sympathize with his views, [31] he had little opportunity to discover that when I visited an individual who was hostile to the group, I gave the contrary impression. This was particularly important in regard to my contacts with the Resegregation Group leaders. Had my ordinary informants realized that I was on good terms with these powerful individuals, I would have gained little reliable data on how ordinary folk viewed the activities of the Resegregationists.

The greater part of my field notes were taken down in approximately verbatim form. When the statements of evacuees appear in this document, they are reproduced, substantially without editing.

I intend to describe these sociological phenomena which I observed in the Tule Lake Center which bear on the renunciation of citizenship. Insofar as my data indicate, I shall state my opinions in regard to the motivations which led the citizen residents of Tule Lake to commit this act. Since I am of the opinion that the activities of the aforementioned Resegregation Group had an important bearing on the renunciation of citizenship, I shall present the history of the development of this group in considerable detail. This, in turn, will require a brief explanation of the sociological developments in the Tule

Lake Center which preceded the formal organization of the Resegregation Group.

I was residing in the Gila Relocation Center when the policy of segregation was announced to the evacuees in the summer of 1943. What data I obtained in the Gila Center in no way contradicts the discussion of segregation presented by Dr. Thomas and R. Nishimoto in The Spoilage (pp. 84-112) or the analysis presented by the WRA Community Analyst, Dr. Morris Opler, in WRA Community Analysis, "Studies of Segregants at Manzanar." These authorities in substance hold that the reasons evacuees decided to become segregants and thereby assume the status of individuals disloyal to the United States were: fear of being forced to leave the Centers and face a hostile American public; concern for the security of their families; fear on the part of evacuee parents that their sons would be drafted if they did not become segregates; anger and disillusionment owing to the abrogation of their citizenship rights; bitterness over economic losses brought about by the evacuation. I was also told by a [32] Japanese informant that some Issei believed that Japan was going to win the war and that they would eventually reap benefits if they went to Tule Lake.

Most of the segregates entered the Tule Lake Center in September and October of 1943. They were at this time far from homogeneous in status (loyal or disloyal) and in sentiment toward the United States. In the segregation movement children who held status as loyal citizens of the United States were allowed to accompany segregate parents. Parents who held status as aliens loyal to the United States were allowed to accompany segregate children. Moreover, over 1,000 pre-segregation residents of

Tule Lake ineligible for segregation refused to leave that Center and were allowed to remain there. Therefore, at one extreme of the population were individuals who, when I made their acquaintance in Tule Lake, voiced sentiments which were decidedly pro-Japanese. At the other extreme, in my opinion, was a significant proportion of the population which had no intention of going to Japan and felt no sentiments resembling loyalty to Japan whatever. Between these two extremes was the bulk of the population—the fence-sitters. Such persons, when I made their acquaintance, told me that they had come to or remained in Tule Lake to make up their minds. In my opinion, they did not look upon segregation as a final step committing them to inevitable expatriation or repatriation. Informants belonging to this group repeatedly made statements to me which may be paraphrased as follows: "All I want is that they let me stay here in peace until the end of the war." It is my opinion that those persons regarded Tule Lake as a refuge where they might remain in relative safety from the economic hardships and physical danger which they feared would be their lot if they attempted immediately to re-establish themselves in the United States.

It should be stressed that the groups described above were not static. Individuals and groups vacillated constantly as they were swayed by events, news, and rumors. A resented administrative policy or a newspaper report of an assault upon Japanese residing outside of the Centers would, for a period of time, increase the number of evacuees who believed that the United States held no future for them. This vacillation was one of the more

salient social phenomena of Center life. Many of the phenomena hereinafter [33] described cannot be evaluated properly unless it is kept in mind. Prolonged insecurity and indecision may unbalance even individuals who possess great mental stability. In view of the fact that the substantial majority of the residents of Tule Lake had been in a state of indecision for almost four years, it is not surprising that they believed fantastic rumors, that they frequently did not think or act logically, that they were prone to take what appeared the immediate path to safety, and that they were predisposed to fall into mass anxiety which on several occasions rose to panic.

I did not visit the Tule Lake Center until February 1, of 1944. Consequently, I was not residing there when the events I shall outline briefly below took place. My statements are based on a great deal of data acquired after my arrival and on WRA documents.

It is my opinion that the demonstration of November 1, 1943 resulted substantially from a widespread evacuee sentiment that the living facilities in Tule Lake stood in great need of improvement. The listing of these alleged grievances would require many pages. On October 15, 1943, a truck transporting Japanese workers to the project farm turned over. Some 30 men were injured, several severely. One died within a few days. The Japanese farm workers refused to return to work. The residents, under the guidance of leaders who had attained some prestige in the Relocation Centers from which they had come, selected a Representative Body. This body determined to use the farm work stoppage as a means of obtaining a mitigation of the grievances referred to above. I am of the [34] opinion that at this time the Japanese

Representative Body had strong support from the general residents.

On October 26, 1943, certain members of this Representative Body approached the Project Director, stating that the farmers were resolved to continue their work stoppage until the administration gave assurance that the complaints of the residents would receive attention. At this time, only the farmers had stopped work. The Project Director promised to do what he could to relieve the situation. However, without acquainting the Representative Body or the residents with his intention, the Project Director brought in non-segreguee Japanese from the Relocation Centers to harvest the crop. This action on the part of the Project Director deprived the residents of their only important bargaining point: the fact that the valuable potato crop would spoil with great loss if not harvested immediately. Moreover, it is my opinion that this action was viewed by the segreguees as a breach of trust on the part of the Administration. I believe that it greatly increased segreguee hostility against the WRA administration.

On November 1, 1943, Mr. Dillon Myer, National Director of the WRA, visited the Tule Lake Center. Seizing this opportunity to appeal directly to him, the leaders of the Representative Body engineered a mass demonstration during which a crowd of segreguees, variously estimated at from 5,000 to 10,000 surrounded the administrative building. According to WRA documents the behavior of this crowd was most orderly. However, a group of young Japanese entered the hospital. They attacked and severely beat the Caucasian Chief Medical Officer, who, in my opinion, was extremely unpopular with

the Japanese residents. It is my opinion that these assailants had no connection with the leaders of the Japanese Representative Body. When order had been restored, the leaders of the Representative Body again presented the list of the residents' grievances. Mr. Myer promised to investigate the complaints and take action if they were justified. He made such a statement to the crowd which then dispersed quietly.

On the night of November 4, 1943, a fight broke out between a group of young Japanese men and a few Caucasians. Later, a Japanese informant told me that he had been the leader of this group of Japanese. He stated [35] that this group had taken it upon themselves to watch the project warehouses at night in order to prevent the WRA administration from transporting food to the harvesters from the Relocation Centers. It is my opinion that this informant in this regard was telling the truth. While this fight was taking place, the Project Director requested the assistance of the Military Police. The Military assumed control of the Center. On the night of November 4 the Military arrested 18 young men found in the administration area, released 9 of them and confined the remainder.

Many informants told me later that on the night of November 4 they were not aware of the fact that the Military had assumed control of the Center, and that they set out for work the next morning as usual. This statement is credible for the evacuee residence section was at a considerable distance from the administrative section. In any case, a large number of evacuees approached the administrative section on November 5 at the beginning of the working day. They were probably joined by the

relatives of the Japanese hospital staff, which had not been allowed to return to the Japanese section by the Military. These persons were met by a cordon of soldiers and told to return to their barracks. When these orders were not obeyed, the soldiers released tear gas into the crowd. Ten months later, informants still spoke of this event with great bitterness, holding that it was not just to throw tear gas at them when they were attempting to go to work.

The construction of a "man-proof" fence, separating the administrative buildings from the Japanese residence section was now begun. All Japanese work in the administrative section was temporarily suspended, since all residents were confined to the Japanese section. Within a few days the Japanese hospital staff and reduced garbage and coal crews resumed work as a result of a conference between the Military and members of the Japanese Representative Body. The Military, I was told, decided to cut the garbage and coal crews to one-third of their former size. This created difficulties for the Japanese Representative Body, which was caught between the stand of the Military and the attitude of the Japanese residents who did not understand why some persons were allowed to return to work while others [36] were not. Both parties then agreed to hold a mass meeting at which the Lieutenant Colonel and members of the Japanese Representative Body would speak, each explaining the situation to the residents. When this matter was put before a session of the Representative Body a factional dispute arose, certain members holding that the Military was not allowing the Japanese sufficient time to speak. Despite strong opposition from the chairman of the Representative

Body the anti-mass meeting faction swayed the body into voting not to attend the mass meeting. Messages to this effect were thereupon sent to each block and read in the mess-halls. The Military was not informed of this decision. At the appointed time, the Lieutenant Colonel and the regional director of the WRA entered the camp with a strong military escort and took their places on the outdoor stage. No Japanese came to hear them. They delivered their speeches, nonetheless.

On the same day, November 13, the Military declared martial law to be in effect. The Military also began to arrest the leaders of the Representative Body, some of whom went into hiding but gave themselves up voluntarily on December 1, 1943. Other men, suspected of being leaders, were arrested. A stockade was built to house these detainees.

After the declaration of martial law and the arrest of these leaders the residents entered upon a partial strike. In substance, they refused to return to work until the apprehended men were released. Doctors, nurses, mess workers, block managers, and the coal and garbage crews continued to work. The Military continued to make arrests and by mid-December of 1943 over 200 persons were confined in the stockade.

For over two months the residents maintained their partial strike. However, as the weeks passed, the monotony of a life without employment or recreation, the strike curfew, and the hardships imposed by the loss of the monthly pay check and clothing allowance markedly decreased the enthusiasm of the early period of the strike. In mid-December of 1943 a new group of Japanese leaders arose and with strong assistance from the WRA

administration attempted to influence the residents to abandon the partial strike. In mid-January of 1944 a ballot was arranged and the [37] residents voted to stop the strike by a plurality of 473 out of 8,713 votes cast. The WRA resumed control of the Center, using the new group of leaders, the Co-ordinating Committee, as a liaison body between the administration and the residents. Jobs were quickly filled and evacuees were now allowed to enter the administrative area with a pass, submitted to the sentry at the gate.

Twenty days after the referendum vote had been cast I made my first visit to the Tule Lake Center. It is my opinion that at this time even conservative residents deeply resented the past policies of the WRA administration and that they disliked and distrusted the administrative sponsored Co-ordinating Committee. Many persons claimed that the members of the Co-ordinating Committee were not their elected representatives (as, indeed, they were not). Some informants called certain of the acts of the former Representative Body silly, foolish, and radical, but stoutly maintained that this body had been and still was the legitimate representative body of the people.

In March of 1944, during my second visit to Tule Lake, I became aware of the existence of an underground pressure group. This group spread propaganda and distributed pamphlets which were designed to discredit the Co-ordinating Committee. This group also agitated to obtain the release of the men detained in the stockade. Some of the members, to my certain knowledge, had relatives who were detained and who were alleged to have been beaten by the WRA Internal Security on November

4, 1943. It is my opinion that during February and March of 1944 this underground group was not regarded with respect by most of the residents. My informants usually spoke of the group with derogation, calling the members agitators and radicals. In the spring of 1944 this underground group was considerably strengthened by the arrival of certain parolees from Santa Fe, the Department of Justice internment camp. Some of these parolees, I was informed, had contributed to anti-administrative disturbances in Relocation Centers before their internment and in my opinion they were agitators of experience and prestige. In addition the underground group established a connection with a man who, I was informed, was a powerful gang leader from the Manzanar Center. This man, [38] I was told, had led a pre-evacuation gang on Terminal Island, California and was also credited with having instigated much of the violence which occurred in the Manzanar Center in December of 1942. I was personally acquainted with this alleged gang leader and in my opinion he was very clever. He was, in any case, never called to task for these alleged activities by the authorities.

It is my opinion that these experienced agitators took control of the up to this time rather inept underground group which continued to circulate propaganda against the Co-ordinating Committee and against the WRA administration. I believe and have data which indicate that they spread rumors to the effect that the members of the Co-ordinating Committee were inu (stool-pigeons), that they were not "true Japanese", and that they had betrayed the people to the WRA administration. They added to the constant stream of rumors that the members and sup-

porters of the Co-ordinating Committee were being paid large sums of money by the WRA administration and that they were making large profits in graft at the expense of the residents and with the connivance of the administration. The officers of the Center's Co-operative Enterprise, who had substantially supported the Co-ordinating Committee's political coup were particularly singled out as inu and grafters par excellence.

The Co-ordinating Committee countered with propaganda to the effect that the activities of the underground group were "un-Japanese" and that "true Japanese" were persons who behaved in an orderly manner and did not bring hardship and misery upon their fellow residents.

The propaganda of the underground group was by far the more effective. Many of the residents were disgruntled and bored. Probably one-third of the employable residents were not given work, since the Center was so crowded that jobs were not available. The residents, in short, were predisposed to repeat, and to some extent believe, almost any rumor about the inu. Many, however, continued to voice disapproval of the underground agitators.

In April of 1944 the underground group emerged and adopted the name, Saikakuri Seigan (literal translation is "Appeal for Resegregation"). This body will hereafter be called the Resegregation Group. The leaders sent a [39] letter signed by an unimportant member of the organization to Attorney General Biddle, requesting permission to circulate a petition for the signatures of those residents who desired early return to Japan and who, meanwhile, wished to be separated, in Tule Lake, from those not so inclined. This letter was channeled to the

WRA administration at Tule Lake and permission was given to circulate the petition providing "that the survey will be made without commitment on the part of the administration." I made my third visit to the Tule Lake Center several days after this petition was presented to the people and found the residents in great confusion. Rumors had spread that those persons who did not sign the petition would not be allowed to expatriate or repatriate. The WRA administration had issued a statement that it had no intention of carrying out a resegregation and that no petition had been authorized. Almost all of my informants expressed disapproval of the petition. They stated that they saw no point in separating the residents of Tule Lake on the narrow basis of whether they were willing to return to Japan on the next exchange boat. By refusing to sign the petition, however, they exposed themselves to the epithet of "fence-sitter." Almost every informant stated forcefully that the fence-sitters ought to get out of Tule Lake but no one admitted that he might be a fence-sitter. The Resegregation Group obtained some 6,500 signatures of citizens and aliens, a figure which includes the dependents and minor children of the signers. In absentia signatures were also accepted. The relatives of men confined in the stockade signed for them. Persons who had signed the petition were thereafter considered members of the Resegregation Group. Many signers were citizens of the United States, although the leadership clique, the policy makers, was almost entirely composed of aliens.

The wife of a leader of the Resegregation Group, made the following statement to me in an interview which took place on April 13, 1944. "We're going to stick to Japan.

We cannot raise our children overnight to become Japanese subjects." I asked her how the Resegregation Group proposed to distinguish between these residents who sincerely desired to return to Japan and those who did not. She said, "Those guys who won't [40] say 'Yes' to the petition are the guys who are going to stay here (in the United States)." I then asked her what was to be the fate of the thousands of people who had not signed. She replied, "Those other people—they didn't stick up for us in the crisis. It's not our business to worry about them."

In addition to stirring up a great deal of excitement and confusion, the petition put the harassed Co-ordinating Committee out of existence. The members of this body resigned, telling me that they bitterly resented the fact that the WRA administration, without consulting them, had recognized their political opponents to the extent of allowing the circulation of the petition. From this period (late April, 1944) until the end of my stay in the Center (May, 1945) the Japanese residents of Tule Lake had no formal representative body which might present community problems to the WRA administration. The WRA made an attempt to sponsor such a body. The Resegregation Group vigorously opposed this attempt. Many informants held that a person who accepted a position on this proposed representative body would be called an inu.

The leaders of the Resegregation Group, in my opinion, now turned their energies to activities calculated to keep the Center in a state of turmoil. They told me frequently that thereby that would prove to the WRA authorities in Washington that trouble would not stop until a resegregation took place. The leaders continued to spread propaganda against the now ex-members of the Co-ordinating

Committee and other so-called inu, who were usually individuals who counselled a modicum of co-operation with the administration and/or criticized the policies of the Resegregation Group. For instance, a leader of the Resegregation Group told me that Mr. Hitomi, the general manager of the Co-Operative Enterprise, had attempted to bribe the alleged gang leader and Resegregationist with a large sum of money to influence the recently arrived segregees from the Manzanar Center to join the Tule Lake Co-op. This and similar stories were widely circulated. In this regard it is significant that much later the Project Attorney, Mr. Noyes, told me that an officer of the Co-op had made an affidavit to the WRA Internal Security that this alleged gang leader repeatedly threatened the officers of the Co-op. This affidavit was [41] submitted just prior to the relocation of the affiant.

A series of assaults added to the mounting tension. Certain men, some of whom, in my opinion, had openly criticized the activities of the Resegregation Group were attacked at night and severely beaten. Mr. Hitomi's brother was beaten and is said to have suffered a fractured skull. The wife of a leader of the Resegregation Group bitterly criticized before me a certain man who was openly protesting against the Japanese drills in which children were urged to participate. Shortly thereafter, this man was beaten. Several of the beatings, I was told by informants, were engineered by the alleged gang leader. Each beating was followed by rumors that the victim had been an inu (stool-pigeon). None of the assailants were apprehended by the police. On the morning of July 3, 1944, Mr. Hitomi, the General Manager of the Co-op and an alleged inu, who had been the object of particularly

vicious gossip, some of which, in my opinion, was spread by leaders of the Resegregation Group was found before the apartment of a relative with his throat cut. I was told that the remaining members of the Co-op's Board of Directors received an anonymous communication to the effect that they would be next. The Japanese members of this board resigned in a body. About 15 of the most notorious inu, including the evacuee chief of police, fled from the Japanese section with their families and were given temporary quarters on the administrative side of the fence. Shortly thereafter, the Japanese members of the Internal Security resigned. (Later, after considerable difficulty, wardens were recruited with the understanding that they were expected only to keep order in their own blocks.) The residents of the Center were so frightened that I was unable to pay visits for several weeks. Several informants requested that I never call on them again.

The WRA Internal Security attempted to apprehend these assailants. They could accomplish little, however, against the tremendous fear of being stigmatized as an inu.

From this point forward many of my informants began emphatically to express dissatisfaction over the lawlessness and, as some termed it, the gangsterism and hoodlumism which prevailed in the Center. Repeatedly, they voiced the desire that they might get some peace and order. No one, however, dared to state that someone ought to inform to the administration. The following statements are typical:

July 24, 1944: an Issei:

"In this camp no really able man will show his face because so many narrow minded fanatics are in camp. . . . Even your safety cannot be guaranteed. . . . These agitators think that by making trouble here they are doing good for Japan. That's extremely wrong."

On July 19, a Kibei girl, a teacher in one of the Japanese language schools, made the following statement:

"My students are asking me, 'Sensei (teacher)', they say, 'What would you think if I got leave clearance and got out of here?' . . . They say: 'Gee whiz, what's going to happen to us?'"

On July 13, 1944 the project newspaper, the Newell Star, published a statement explaining that the Congress of the United States had passed a law which provided that a citizen of the United States might make a formal written renunciation of nationality. No informant commented upon this statement in the month that followed.

On August, however, the Resegregation Group leaders organized a young men's group ostensibly devoted to the study of Japanese history and culture (the Sokoku Kenkyu Seinen-dan, hereafter called the Young Men's Fatherland Group). Among the formal aims of this young men's group, which, to my knowledge, were not at this time publicized among the general residents was the following statement:

"Since the outbreak of war between Japan and America, citizens of Japanese ancestry have moved along two separate paths; (1) for the defense of their civil rights on legal principles, and (2) for the renunciation of their citizenship on moral principles."

Two prominent leaders of the Resegregation Group were the advisors to the Young Men's Fatherland Group, but this fact was at first carefully concealed from the WRA administration and, so far as I was able to determine, from the general residents. In fact, to the best of my knowledge and belief, until September 24, 1944, the connection of this group with the Resegregation Group was very carefully concealed from both the Administration and the residents. The first meeting of this organization was held in the high school auditorium with the permission of the WRA. Some of my informants stated that they believed the contention that this organization had no political aims and joined it. In my opinion, they were telling the truth, [43] for in November of 1944, they attempted to withdraw. A few expressed suspicion of the leaders, Within a few weeks, the organization claimed some 600 members, most of whom were citizens.

This organization obtained office space from the WRA. Frequent meetings were scheduled for its members. As the weeks passed, the speeches delivered at these meetings took on an increasingly Japanese nationalistic tone. Outdoor exercises which took place before dawn were made compulsory for members. Gradually these exercises became more militaristic. Week by week additional militaristic features were added. Bugles were purchased. By late November of 1944 members were wearing uniforms consisting of a sweat shirt bearing the emblem of the rising sun even when they entered the administrative area. They were also required to shave their heads in imitation of Japanese soldiers.

On October 30, the Issei advisor to this organization explained its aims to me:

"If we were training in open daylight, it will not impress the people much. . . . But by getting up early in the morning, by exercise and training after worshipping and praying for victory and eternal life for our soldiers, these young people can be deeply impressed."

On August 30, the WRA administration called certain of the leaders of the Resegregation Group into conference and gave them a letter written by Mr. Dillon Myer which was dated July 7. This letter denied any administrative intention of a resegregation. The leaders of the Resegregation Group did not announce this administrative denial to the members of their group. Instead, without the knowledge of the administration, they mimeographed Mr. Myer's letter and distributed it widely, mistranslating the last paragraph as follows:

"However, I am sure that all problems in the Tule Lake segregation center that need attention and improvement will be studied and remedied in consultation with the representatives of the Resegregation Group. . . . Needless to say, I am sure Director Best will be glad to discuss frankly with you the question of resegregation about which your representatives have communicated."

It is my opinion that by mid-August of 1944, the leaders of the Resegregation Group, whose plans for a resegregation were not going very well, were [44] giving the political potentialities of the renunciation of citizenship much thought. These leaders frequently brought the topic up in conversation with me. The following statements are typical.

On August 28, the wife of a leader stated:

"We figure that something will have to be done (by the Administration) in September. That's when the denunciation (note mis-spelling) will come through. If we stay here as we are another trouble (uprising) is going to come up. . . . We've been tolerant enough about the school (American school) here."

On September 7, the Issei's advisor to the Young Men's Fatherland Group speaking of the proposed renunciation, stated to me:

"We don't know how far this will go. But certainly those who wish for immediate repatriation to Japan and at the same time don't wish to be inducted into service or relocate wish to renounce their citizenship."

Despite the fact that the leaders of the Resegregation Group had on August 30 been told by the WRA administration that there was to be no resegregation, they, on September 24, 1944, brought forth another resegregation petition. This petition was accompanied by an explanatory pamphlet in Japanese with an English translation appended. A part of this pamphlet stated:

"Whereas, we realize the uselessness of our American Citizenship, and so as soon as and in the event a law of renunciation for citizenship become effective, we gladly renounce our citizenships. Therefore, we make clearly our positions by being a real Japanese. Furthermore, we be classified clearly as an enemy alien and thereby be treated in accordance with the Geneva Conventions."

I called on one of the most influential leaders of the Resegregation Group, on September 21, three days before the petition was circulated. He showed me the pamphlet

and made the following statement, which I recorded verbatim:

"You know the people behind this have been working underground for a long time. Anyone who would have come out openly would have been put in the stockade. We have been working on this since April, awaiting the moment, but we had to keep it secret. Now the time has come. [45]

"If the Administration recognizes this movement, we will have a good mutual understanding. Besides, Mr. Myer sent us a letter and recognized this movement.

"Those who refuse to sign this will have people asking them, 'Are you loyal to Japan or not? If you are not loyal to Japan, why don't you go out?' The people will have to realize this—as long as their appearance is Japanese they will have to sign this. If they don't sign they will be known as not loyal to Japan and will be told in public, 'You are not Japanese. Why don't you go out?'

"Of course, many people who don't want to go back to Japan will sign this, but then they will go in a corner and keep quiet."

On September 27, the WRA administration issued a statement that the petition was unauthorized. My data indicate that the Resegregationist leaders continued their efforts to get signatures. On September 30 a married couple, both influential leaders of the Resegregation Group, exhibited anger over the denial of authorization. The husband asked me, rhetorically, "How can you get authority for a petition like this?" He added that the next time his group "put out something" they were going to take the paper to the block manager beforehand "and he better not say anything". His wife then told me that the

Resegregation Group had received a letter from Mr. Ennis of the Department of Justice, advising them to hold on, that everything was going smoothly and that they would be notified when the renunciation of citizenship forms were ready. Concerning the plans of the Resegregationists, she remarked: "We are going ahead even if the people squawk."

As soon as the petition began to be circulated I attempted to determine how it was being received by the residents. No informant who was not an enthusiastic member of the Resegregation Group spoke in favor of it. I am emphatically of the opinion that the substantial majority of the residents disapproved of the petition and resented the social pressure applied by its circulators. I shall not list all of the derogatory statements made; those that follow will suffice.

On September 26 an Issei informant stated that he disapproved of the petition. He added: "I asked one man, 'Why did you sign the paper?' He said, 'So-and-so said so-and-so and I signed it.' They (persons who behave in this manner) don't have any judgment." [46]

On September 28 an older Nisei informant stated:

"One point I really oppose—they threaten to use force. . . . Many people are wondering whether they should sign or not. They're afraid. Many are being led into it.

"Another thing, I've heard that (the nominal leader of the Young Men's Fatherland Group) stated that they had a number of killers (in his group). Why does he say that?"

On October 2 a male Kibei informant who lived in a block where many members of the Resegregation Group also resided, stated:

"I say, 'Leave me alone and I'll leave you alone!' If I feel like it, I'll sign. I haven't signed yet.

"I'm Japanese no matter what they say! Even if we sign or don't sign it won't do any harm."

On October 12, the same informant stated:

"I don't like the way the Sokoku Kenkyu (Young Men's Fatherland Group) threatens people. They say, 'If you don't sign you're going to be drafted.' So a lot of dumb people signed. . . .

"But I think those who signed were wise. I'm too stubborn to sign and that makes me enemies. It's better to be like the proverb: Nagai mono niwa nakeroro; okii mono niwa momareyo—let the long snake wind around you; let the big snake swallow you.

"If I were Project Director I would segregate them. I'd give each person a pink paper and a white paper and an envelope. Then those who want to be segregated could sign the pink paper and those who didn't could sign the white one. Then they could mail it to the WRA and nobody see it. Then I'd like to see how many would sign!"

At this time I was surprised at the almost unanimous disapproval which informants who were not leaders of the Resegregation Group voiced concerning the petition. I was not surprised that they disapproved but that they expressed their sentiments so frankly, for I am of the opinion that the leaders of the Resegregation Group were feared. I also suspected that some of the persons who spoke derogatorily of the petition before me were signing

it nonetheless, for it was painful to be told in public: "You are not Japanese." Moreover, a rumor was widespread in the Center that the Department of Justice was [47] going to take over the Tule Lake Center soon and that when this occurred those persons who had not signed the petition would be forced to leave. Besides, the WRA administration had denied the petition authorization. As several informants stated: "To sign it won't do any harm." It is, therefore, my considered opinion that at this period (September and October 1944) a very substantial proportion of the residents disapproved of the activities of the Resegregation Group, and that they were irked by the demand that they commit themselves to an early return to Japan. Many, however, signed the petition to be on the safe side whatever transpired. Without doubt, however, there were a number of individuals who signed the petition through the desire for an early return to Japan.

In my subsequent visits to the leaders of the Resegregation Group, I was impressed by the fact that though they boasted of the number of signatures they were getting (10,000) they were not pleased by the reception the petition was getting from the people. Moreover, it is my opinion that certain residents were beginning to take steps toward an organized resistance. One of my informants, an elderly Issei, told me that he advised persons who consulted him not to sign the petition. He also told me that he had made a speech before a group of Nisei telling them that nothing would be gained by making trouble and that agitation only brought suffering upon the women and children in camp.

"I said that this camp is no place for young men to make trouble. They should study. I said, 'Young men, behave yourselves.' "

During an interview which took place on October 10, 1944, this informant denounced the Resegregationists leaders to me, stating that they were misleading the youth of the Center. He stated: "I say the Japanese government is not so narrow minded as you."

I was concerned for the safety of this informant who, in my opinion, was showing unusual courage in speaking publicly against the Resegregation Group. I warned him that one had to be careful what one said in camp, for there were dangerous men about. He laughed and called the Resegregationist leaders cowards. Five days later, while he was returning from an evening meeting of his church in the company of two elderly Issei friends, he and his friends were attacked by a group of assailants and beaten severely. When he recovered, he told me: [48]

"The three of us were coming home from a religious meeting at block 52. I heard noisy footsteps. One of my friends was at my side, the other was 15 feet ahead. The first man who was attacked yelled. I turned around and saw that big stick. I can still see the club like a frozen picture, but I didn't see anything after that."

This informant also voiced the opinion that his speech before the Nisei had been reported to the Resegregationist headquarters and told me that the attack upon him had been instigated by one of the advisors of the Young Men's Fatherland Group, the alleged gang leader. He added that the attack had been led by an Issei who was known to be the so-called gang leader's right hand man. I was given this information after making a promise of strict confi-

dence. My informant feared that if he testified against his assailants, the gang would attack his children.

At this time the rumor that another man named Tambara had been threatened spread widely through the Center. The wife of the Issei advisor to the Young Men's Fatherland Group told me: "They wrote him, 'Would you like to be another Hitomi?'" (Hitomi was the man murdered on July 3, 1944.)

On October 21 the alleged gang leader addressed the members of the Young Men's Fatherland Group. At this meeting several informants told me that he incited the young men to violence and promised to take care of them if they got into trouble. Several informants stated with disapproval that he had quoted a Japanese proverb, which like many proverbs, is flexible in interpretation. It may, however, be translated to mean: "To help the cause, we must kill those who stand in its way." Most informants translated it: "The little guys must die so that the big guys may live." They left no doubt in my mind, however, that they believed that the so-called gang leader was threatening persons who opposed the policies of the Resegregation Group with violence.

I called on this alleged gang leader several times during this period and we had lengthy conversations. During my visits his outer office (he was a block manager) was occupied by several muscular young men. While conversing with him I was obliged to sit so that I faced a large Japanese flag. On October 23 he told me that during a recent altercation he had had with the Project Director a group of "70 or 80 boys" had surrounded the block manager's headquarters and "demonstrated their offensive spirit." [49]

On October 30 the aforementioned right hand man of the alleged gang leader knifed a young Nisei. I was told by several informants that the father of the victim had been a Resegregationist, had "found out how rotten they were" and had publicly criticized the alleged gang leader. The Project Attorney, Mr. Noyes, told me that the victim gave less and less incriminating evidence every time he testified in the hearings held by the WRA Internal Security. The Issei advisor to the Young Men's Fatherland Group accompanied the defendant to his hearings and his trial before the Modoc County authorities and vouched for him. The defendant was given a sentence of 90 days. Later, informants reported that the alleged gang leader and the Issei advisor were boasting that this light sentence was evidence that they could protect their own.

During this period one of my most reliable informants, a Nisei and a veteran of World War I, told me that he had been repeatedly threatened with physical violence because he openly criticized the Resegregation Group and the alleged gang leader. I was on excellent terms with this informant and interviewed him frequently for over a year. In all of this time, he, to the best of my knowledge, never misinformed me deliberately. I believe, therefore, that from mid-October until the end of November 1944, this informant lived in expectation of a violent physical assault from the Resegregationists. He showed me a black-jack which he carried whenever he left his apartment at night. After the beating of my Issei informant and the knifing, this informant stated that he thought matters had gone far enough. He thereupon sent written denunciation of the alleged gang leader out of the Center to several Japanese friends, with the instruction that if he were beaten or killed or if he gave the word, this denunciation

was to be given to the Federal Bureau of Investigation. He then informed the alleged gang leader of this action and stated that if another beating occurred, he would denounce him. No more beatings occurred that came to my attention. Moreover, shortly thereafter, the alleged gang leader resigned his position as advisor to the Young Men's Fatherland Group, a fact which I checked with leaders of the Resegregation Group.

I affirm that to the best of my knowledge and belief many residents of the Tule Lake Center and I myself, believed that one of the advisors to the [50] Young Men's Fatherland Group led a gang which assaulted persons who criticized the policies of the Young Men's Fatherland Group and the Resegregation Group. I also affirm that many residents believed that persons who opposed the Resegregation Group were in immediate danger of physical violence from this gang.

On November 3, 1944, the Resegregation Group and the Young Men's Fatherland Group vigorously sponsored a pretentious ceremony to celebrate the birthday of the emperor Meiji. Non-members were forbidden to attend this ceremony. I was invited to attend this ceremony as a guest and did so, deeming it an opportunity to gain some idea of the numerical strength of the supporters of the group. Since the participants stood motionless for over an hour, I had an excellent opportunity to count them. Approximately 600 members of the Young Men's Fatherland Group were present and approximately 1,800 additional adults and children. This is significant, for the birthday of the emperor Meiji was considered an important holiday and any member of the Resegregation Group who did not attend this ceremony could not, in my opinion, have been an enthusiastic member. Moreover, if he did not at-

tend he stood in danger of serious reproof from fellow members.

It is my considered opinion that until December of 1944 the substantial majority of citizens residing in the Tule Lake Center were not markedly interested in the renunciation of citizenship and did not welcome the opportunity to renounce. On August 14, 1944, the first Japanese who was not intimately connected with the leadership clique of the Resegregation Group introduced the subject of the renunciation into conversation with me. Between that date and December 5, when Mr. John L. Burling of the Department of Justice arrived at the Tule Lake Center, I had 95 interviews with informants (excluding all interviews with leaders of the Resegregation Group). To my certain knowledge some of these informants were nominal members of the Resegregation Group. Others were not. Some 80% of my informants were citizens. Approximately 60 of these interviews were very extensive, lasting several hours or an entire afternoon. All of the interviews were informal, for it was my policy to allow the informant to direct the greater part of the conversation. Almost invariably, when informants were concerned over a matter, they introduced the subject into our conversations. [51]

In the many pages of verbatim data I collected between August 14, 1944 and December 5, 1944, the renunciation of citizenship was mentioned six times by informants who were not leaders of the Resegregation Group. Only one informant stated that he intended to renounce. This man,

an extremely reliable informant who was hostile to the Resegregation Group stated that he intended to renounce because he had committed himself to return to Japan and would not break his word. On September 4, he stated:

“If there are people who will renounce their citizenship merely to escape the draft it would be a good thing if the (American) government sent them first to Japan—then they’ll get drafted there.

“When it comes to a final showdown, I think most of the Nisei will turn it down (will not renounce). . . . Roughly 60% of the people in camp are citizens. I think if 50% (of the citizens) renounce their citizenship, they’ll be doing good. It may be less.”

On September 26, the Issei informant who was later assaulted, stated:

“My common sense opinion is this: from the Japanese part, the right of American citizenship is already denied. So it is not necessary for them to make formal declaration of denouncing it.”

It is my opinion that at this period (August 1944 through November 1944) the attitude of the leaders of the Resegregation Group regarding the proposed renunciation of citizenship was in marked contrast to that of the residents who were not members of this group and to many residents who were nominal members of this group. I believe that the leaders of the Resegregation Group during the months of October and November 1944 expected that the jurisdiction of the Tule Lake Center was soon to be taken over by the Department of Justice. I believe that they anticipated that an especially early and enthusiastic eagerness to renounce citizenship would cause the

members of their group to be recognized by the Department of Justice as individuals particularly worthy of remaining in Tule Lake (under the Department of Justice) while the "fence-sitters" whom they stigmatized as "not loyal to Japan" would be forced to leave the Center. In fact, they repeatedly attempted to give me the impression that they were in almost constant correspondence with the Department of Justice and I am certain that they also gave members and residents this impression. [52]

On October 5, 1944, an enthusiastic member of the Young Men's Fatherland Group and the Resegregation Group told me that during a conference with Mr. Best, the Project Director, the Director had told him that it was almost a certainty that the Tule Lake Center was going under the Department of Justice within 60 days. On October 6, the Project Attorney, Mr. Campbell, told me that the WRA administration was seriously considering making an announcement to the Japanese residents that the Tule Lake Center was to be transferred to the jurisdiction of the Department of Justice. On October 9, the wife of a leader of the Resegregation Group told me that the petition of September 24 had 10,000 signatures and added:

"We are not going to take any more (signatures) because soon we'll be under the Justice Department."

On October 10 Mr. Dillon Myer addressed the WRA staff at Tule Lake and stated according to my notes which are not verbatim that "he didn't know to whom the Tule Lake Center was going to be turned over."

On October 16 the young Resegregationist who stated that he had had a conference with Mr. Best, told me:

"If the Justice Department does not take over it would put me in a tough spot because I made a report to the

Resegregation Committee that they (Justice Department) would take over in 60 days. Mr. Best (the Project Director) definitely told me that this would take place within a week after the (presidential) election. . . . When I made this report to the Resegregation Committee, they were very happy over it."

On October 16, an informant who disliked the leaders of the Resegregation Group, and, in my opinion, was repeatedly threatened by them, stated:

"The Resegregation Group are bragging throughout the camp that it is because of them that the camp is going under Justice. I said to one, 'If your influence is so great as that, you could do much more for the Japanese in other ways.' "

On October 23, the alleged gang leader and advisor to the Young Men's Fatherland Group told me:

"The people are anxiously awaiting for the denouncement of it (citizenship). When Mr. Best made the statement that within 60 days the camp would be under Justice (Department) the people were delighted. We more or less expect it." [53]

I am informed that in the latter part of October 1944 the Department of Justice began to receive petitions for permission to renounce citizenship bearing the signatures of many persons and also received requests for renunciation which were typewritten forms imitating the official forms. Such forms, I am told, were not accepted.

On December 12, the young Resegregationist who told me that he had conferred with the Project Director and

been told that the Center was soon to go under the Department of Justice told me:

"Mr. Best (the Project Director) double-crossed me again. Mr. Best told me definitely that typewritten copies (of renunciation forms) would be sufficient and for me to send in the typewritten copies. I was on the spot (before the Resegregationists) because I reported this."

On December 9, a young Kibei who resided in a block where the Resegregationist Group was very strong, told me:

"The Sokoku bunch (Young Men's Fatherland Group) want to go (to Japan) earlier than any of the rest."

Her husband added:

"The Sokoku bunch typed their forms on the typewriter so that they could be the first ones. I told our neighbors that their forms wouldn't be any good."

I am strongly of the opinion that the leaders of the Resegregation Group were substantially if not entirely responsible for the aforementioned petitions and improper forms and that they hoped by an early renunciation on the part of their citizen members to achieve their long sought goal—resegregation. I have no information on the manner in which the proposition to renounce en masse was put before the members. It is probable, however, that the suggestion was placed before the young men at a meeting or meetings. Whether this is so or not, it is my opinion that members of the Young Men's Fatherland Group who, at this time, refused to apply for renunciation of citizenship or spoke against the suggestion stood in danger of physical violence from members of their own group and knew that they stood in such danger. I have no explicit data that such threats were made.

Mr. Burling arrived at the Tule Lake Center on December 5, 1944. I was told that he had come to initiate the hearings for renunciation of [54] citizenship. Several of my informants apparently believed that the fact that Mr. Burling was calling the leaders of the Resegregation Group and the Young Men's Fatherland Group to see him indicated that these leaders might be apprehended and punished.

On December 14 an Issei informant told me:

"I've heard that 18 of the Resegregationists have been called in. The people first thought they were arrested by the FBI. All of them (the people) are pleased, excepting those who are members, of course. They (non-members) want them to be taken away."

He added:

"The members of the Sokoku (Young Men's Fatherland Group) are narrow minded. Many of them were sorry after they signed and found out what was inside. But if they change their signatures, they're scared. So they can't cancel their signatures, not even if at the same time they didn't want to be one of them."

(In my opinion, this informant was referring to cancellation of membership, not cancellation of renunciation of citizenship applications.)

On December 15 a Nisei informant told me:

"I heard that their (Resegregation Group) leaders were being pulled in. But we don't discuss those things openly. It isn't healthy."

I visited a number of the leaders of the Resegregation Group and the Young Men's Fatherland Group at this time and observed that some of them appeared frightened

by the tone of their hearings with Mr. Burling. The chairman of the Young Men's Fatherland Group asked me why the first question Mr. Burling asked at the hearings was, "Are you a member of the Sokoku." He expressed the opinion that renunciants should only be questioned on their desire for renunciation of citizenship. Another member of the Young Men's Fatherland Group who was present stated: "We haven't been influencing anybody to take out renunciation papers, even though the administration says we have."

From December 8, 1944, until December 17, the date on which the residents heard that the Western Defense Command was about to withdraw the public proclamation and orders of 1943 which had ordered the exclusion of persons of Japanese ancestry from the West Coast, no informant who was not [55] an ardent Resegregationist, stated that he intended to renounce his citizenship. On December 11 a Nisei girl asked me if she would have to renounce her citizenship in order to go back to Japan. She stated that she was not going to apply, but added that "there was a big rumor in camp" that those who did not renounce would not be allowed to go to Japan.

On the same day the chairman of the November 1943 Representative Body, who did not renounce his citizenship, stated:

"I'm not going to renounce mine. If a man doesn't have Japanese citizenship and if he renounces it, he'll be without a country. . . . I wouldn't want to fool this country or evade any obligation to this country by saying that I wanted to go back to Japan and then stay here."

On December 15, a Nisei girl stated:

“They say it’s so hard for you to renounce your citizenship because they want to see that you’re not avoiding the draft. There’s a rumor going around camp that those who do not renounce citizenship are going to be drafted.

. . .

“I hear a person say yesterday—a Nisei—‘You know, I denounced my citizenship and I hated to go to the hearing.’ ‘Why?’ I asked. He said: ‘I have to say awful things about America or they won’t give me my renunciation and I don’t want to do that.’”

I have now described the sociological phenomena in the Tule Lake Center relevant to the renunciation of citizenship up to the announcement of the lifting of the exclusion orders. My data indicate that up to this time the residents of the Tule Lake Center who were not enthusiastic members of the Resegregation Group or the Young Men’s Fatherland Group exhibited no marked desire to renounce their citizenship. It is my opinion that they did not welcome the opportunity to renounce and that a substantial majority of the residents, at this time, had not yet made up their minds whether to return to Japan or not. Yet on December 26, 1944, some 2,000 applications for renunciation were received by the Department of Justice. In January, 1945, 3,400 additional applications were received. My data indicate and it is my opinion that the announcement of the lifting of the exclusion orders and the policy followed by the WRA administration and the Department of Justice from the middle of December 1944 through January 1945 produced a state of [56] mind among the citizen and alien residents of the Tule Lake Center which was substantially responsible for

the majority of applications for renunciation. The paramount reason for renunciation was, in substance, the fear that those persons who did not renounce their citizenship would be forced to relocate.

This phenomenon may be difficult for a person who has not been a segregée to understand. Certainly, an outsider after reading this document would be inclined to conclude that a logical person or even one possessing ordinary common sense ought to have welcomed the opportunity to get out of Tule Lake. Emphatically, it is my opinion that this was not so. The segregées had been stigmatized as "disloyal to America" and as "rioters". They feared that if they took up residence outside the Center they would meet grave economic hardship and discrimination; they feared physical violence from Caucasians if they relocated; they feared that their sons would be drafted; parents feared that if they allowed their Nisei children to relocate they would lose touch with them and that they, the parents, might be obliged to return to Japan alone. The total effect of these fears produced a phenomenon which amounted to far more than the sum of its parts. The residents of Tule Lake had been confined in various Centers for almost four years. It is my opinion that they were predisposed to fall into mass anxiety and mass hysteria, conditions which are not accompanied by logical or well considered action. If the facts and suggestions presented above are kept in mind, the events to be related will be easier to understand.

On December 17, 1944 the residents learned of the proposed lifting of the orders excluding Japanese from the West Coast. On December 19 the project newspaper, the Newell Star, announced "that the new system will permit the great majority of persons of Japanese ancestry

to move freely anywhere in the U. S. that they wish to go." It added that "after January 20 all restrictions will be lifted except in the cases of individuals who will be specifically and individually notified." On the same day a mimeographed announcement by Dillon Myer was distributed among the Japanese residents to the effect that "all relocation centers will be closed within a period of six months to one year after the revocation of the exclusion orders." The same day, Mr. Best, the Project Director of Tule Lake, announced to the Japanese residents that "the Tule Lake Center will be [57] considered a relocation center and a segregation center for some time to come. Those whom the Army authorities designate as free to leave here will be in the same status as residents of a relocation center." The Army Team of some 20 officers began to hold hearings on December 18 or 19. Only male residents were called to these hearings.

Residents whom I visited in the week following the announcement appeared shocked and surprised. Some expressed anxiety. No one, however, stated that he would take advantage of this order and relocate. Instead, a number of rationalizations were voiced, to the effect that they, as segregees, would be allowed to remain at Tule Lake. When, however, the male residents were called for their Army hearings, most of them were not given detention orders. Within a few days it became apparent that segregee status was no guarantee that they might remain in Tule Lake.

On December 24 a Nisei girl told me that she was worried by the results of some of the Army hearings to which young men of her acquaintance had gone. In spite of their pro-Japanese statements, they had not been given detention orders. On the same day a Nisei boy told me

that he had just returned from his Army hearing. He stated that the soldier had asked him if he wanted to renounce his citizenship. "So I said I was going to renounce, because I figured that then I could stay in Tule Lake." He assured me that another young man of his acquaintance had stated that he told the soldier he was loyal to Japan and had applied for expatriation but still he was handed a permit to leave camp, providing he did not go to certain exclusion areas. The sister of this informant then asked me: "They (WRA) won't force us out, will they? What can we do after everything we had is sold? . . . Our family might be able to get along if we had a lot of boys, but still that won't do any good because they'll have to go into the Army."

On December 19 a Kibei told me:

"Four men in my block were called by the Army. They asked them questions like, 'Do you want to go out or do you want to renounce your citizenship?'"

Realizing the effect that such questions put by Army hearing officers would have on the Japanese residents, I made several attempts to determine whether these assertions on the part of my informants were true. Mr. Noyes, [58] the WRA Project Attorney told me:

"Best (the Project Director) talked to Army officers about the renunciation and resettlement question (put by Army officers). When Best inquired about the significance of asking if the evacuee had applied for renunciation of citizenship they answered that it was instructions from the Presidio. And they said that they asked about resettlement just to be human."

On December 23, an ardent Resegregationist spoke scornfully of the fear of people who did not desire to leave Tule Lake:

“The fence-sitters say they are going to grab on with their hands (to keep from being forced to relocate). They say, ‘Let the others go first . . . Then when everything’s safe, we’ll go.’”

On December 29 a Nisei girl stated:

“Are they going to kick us out? What good will that do, when we don’t want to get out? . . . We hope that by renouncing citizenship we will be allowed to stay here, but we are not sure. WRA should inform us of this.”

I do not affirm that the Army hearing officers asked residents of Tule Lake whether they were going to renounce their citizenship or whether they were going to relocate. I do affirm, that to the best of my knowledge and belief, many residents believed that such questions were asked. I also affirm that this belief, coupled with the statements issued by the WRA administration was in large part responsible for the fact that on December 26, 1944, some 2,000 applications for renunciation of citizenship were received by the Department of Justice.

On December 27 the officers of the Resegregation Group and the Young Men’s Fatherland Group were removed from Tule Lake to the Department of Justice Internment camp at Santa Fe. It is my opinion that the relatives of the interned men and other Resegregationists interpreted or chose to interpret this internment as the first step in their long awaited project of a resegregation. Informants stated that relatives of internees were boast-

ing of the "safe" status of the internees and predicting that within 50 days they would be re-united. The internees would be returned to Tule Lake while persons who were not member of the Resegregation Group would be "kicked out". A rumor, which had probably existed before, became widespread. [59] It held that individuals who had not renounced their citizenship by January 20 would be "kicked out of camp" or would be drafted.

On January 2 a Kibei informant told me:

"They (Resegregationists) keep saying that anybody sent to Santa Fe is taking a step forward to becoming a real Japanese. If this propaganda takes effect it will cause great trouble . . . I think the Hoshi-dan (Resegregation Group) undoubtedly has started the rumor that by renouncing citizenship the people will be allowed to stay here at Tule Lake."

On January 3 a Nisei informant stated:

"The people picked up say they're glad. They say we (persons not interned) are going to be kicked around while they will be safe and sound."

On January 19 an informant told me of a rumor which he said had been current for several weeks:

"They say all those persons who have not renounced their citizenship will be kicked out of camp . . . Some people are also being told to answer in a radical way so that their citizenship will be taken away."

Meanwhile, expressions of anxiety and fear increased in number and in force. Many residents complained that they had been given no specific information by the WRA as to who was going to be allowed to stay in Tule Lake.

On January 2 a Nisei informant stated:

"We wouldn't mind going back to San Francisco if we had everything as when we left it. We'd jump right out. But we've lost everything."

On January 3 another Nisei informant stated:

"I don't know what's going to happen to us! It's very confusing. I think everybody feels that. They don't know what's what yet. In the first place why do they want to kick us out? It's their fault we came here. They can't say, 'We'll give you 25 dollars and coach fare. Get out by such and such a day.'

"Since the people have been in camp three years, their funds are exhausted. It's all right for people who can afford it."

This informant then added:

"Can people be thrown out even if they renounce their citizenship?"

On January 5 the WRA officials reiterated their intention of getting all evacuees who were "cleared" out of all the Centers. An official [60] pamphlet was distributed throughout the Center in which Mr. Myer reaffirmed his earlier statement that the prime objective of the WRA was "to restore the people residing in relocation centers to private life in normal communities." It is my opinion that this statement did not reassure the residents of Tule Lake.

On January 5 an Issei informant stated:

"They (the Japanese) have nothing to depend on . . . I don't know one person who wants to go out."

On the same day a Nisei stated:

"My intention is to stay here until I'm forced out."

On January 8 another Nisei informant stated:

"The people are very much at a loss due to the fact that they can't make a decision. The WRA officials admit they're in the dark themselves. They don't know what to do or what it's all about.

"I've got six children and my wife. Also my father and mother. To go outside you have to have a certain kind of home. If they want me to go out the least they can do is to give me some kind of housing and say, 'Now, will you take this?' Instead, they are saying, 'America's going to help you. So you go out and do what you can.' That's not dependable. We want some assurance if we're to go out. By staying here, I'll have a roof over my children's heads and enough to eat, although I don't like the food.

"When the Army came out to ask us to make this decision I told the Colonel, 'If you set a deadline, I will renounce my citizenship due to the fact that I have no place to go.'"

On January 9 another Nisei informant stated:

"Under the international agreement, they can't kick the aliens out of camp. That's the reason that so many people are renouncing their citizenship."

Meanwhile, a number of informants who, in my opinion, were influenced by newspaper reports describing the statements made by certain residents of California, told me of rumors which were being circulated in the Center.

On January 13, a Nisei stated:

"California is the last place I'd want to go back to with all I've [61] been reading. They say the Army will back us up. But that's only against mob violence and not against what an individual might do. If some person beats us up, we can't do anything about it."

On January 12, another Nisei stated:

"People are saying that some Japanese were killed around Stockton (California). Reading the papers and considering all other facts, the people have a feeling of not wanting to return to the Pacific Coast."

On January 14, another Nisei stated:

"What do they want us to do? Go back to California and get filled full of lead? I'm going to sit here and watch."

On January 15, another Nisea stated:

"Rumor is being circulated that five Japanese were killed in Fresno, (California)."

Such rumors and the sentiments which they engendered endured for many months. On May 8, 1945, a Nisei informant stated:

"Yeah, you're free all right if you go out. You've got civil rights. Civil rights to be dynamited! Civil rights to have your head cut off! They're even trying to take poor Doi's land away from him now."

This informant's sister, who was present, tried to calm him, and explained to me: "If they had made an example of those soldiers (who attempted to dynamite Doi's residence in California) it would have helped."

On January 24 Mr. Burling released a letter written on behalf of the Attorney General condemning the activi-

ties of the Resegregation Group, stating that they "are intolerable" and that they "will cease." One informant criticized the letter as "sarcastic." One Nisei, who had some legal training but, to the best of my knowledge, had no connection with the Resegregation Group or the Young Men's Fatherland Group, remarked:

"The Department of Justice is not sincere. They are hounding people with a childish mentality and making them act like kids . . . They've got you behind the eight ball once you renounce.

"The way these hearings were conducted it seems as if Burling had the final say of whether to accept a renunciation or not. The law states that it is the Attorney General who had the final say. As I see it, it's a frameup. I'd hate to live in this country if Burling was Attorney General." [62]

Other informants, however, appeared to be distinctly pleased at the verbal castigation the Resegregation Groups had received:

On January 27, an informant stated:

"Confidentially speaking . . . I think he's got brains in his head. Many of the people think he did the right thing . . . The Department of Justice really meant business. The people were kind of happy."

On January 31, another informant stated:

"It sure disgraced many of them (Resegregationists). If they had shame enough, they wouldn't have the face to come out with. We all agreed that that ought to have put a stop to it. But it seems it didn't."

On February 8, another informant stated:

"It was time somebody told them off! . . . After all, this is American soil."

On the same day, another informant stated:

"The people thought, 'That's telling them!'"

The Resegregation Group and the Young Men's Fatherland Group, however, continued their activities. They also continued to spread propaganda to the effect that internment was a badge of honor, that internment made one a "true Japanese," and that their group was shortly to be placed "safely" in a Center under the Department of Justice, while all other residents of Tule Lake would be forced to relocate.

On January 29, 1945, a statement by Mr. Dillon Myer was released in the project newspaper that "those who do not wish to leave the (Tule Lake) Center are not required to do so and may continue to live here or at some similar center until January 1, 1946." My data indicate that this statement did not reassure the residents. Instead, it is my considered opinion that the six weeks of tension, fear, and extreme insecurity brought about in part by the residents' interpretations of Administrative policies and the Army hearings and, in part, by the internments and the rumors circulated after the internments had, by the end of January 1945, brought the residents to a state bordering on panic. The phenomena of mass hysteria are to so great an extent marked by lack of logic that they are difficult to describe in a document of this nature. I shall offer the following statements made by informants between January 26, 1945, the date of the second internment, [63] until the end

of February 1945. On the basis of my intensive study of the situation, I affirm that to the best of my knowledge and belief, these are not the statements of a few atypical individuals but that they are a rather mild representation of the state of mind of the substantial majority of the residents. I also affirm that to the best of my knowledge and belief in these specific statements my informants were telling me the truth, except when they state that the members of the Young Men's Fatherland Group were glad to be interned. Here, a closer approach to the truth would be, "They say they are glad to be interned."

On January 29, a Nisei girl told me:

"The Hokoku group (Young Men's Fatherland Group) were all glad to get sent to Santa Fe. They have this one feeling that now their status is sure about the draft."

On January 30, an Issei informant told me:

"Most people are glad those radicals were picked up . . . but the radicals are still stubborn so we better keep quiet. If I should say what I think in public they (Resegregationists) would say, 'Beat him up!'"

On February 1 a Kibei informant told me that the Young Men's Fatherland Group was going about the camp asking for signatures which would indicate that members were still loyal to the organization. He said, "Those who refuse to sign they call 'dog'." He added that a friend of his who had been scheduled for internment and then released feared physical violence from members of the Resegregation Group because he had not gone to Santa Fe. "Mr. Doi came to stay here (at the informant's apartment) at first, but I told him to go back to block 59. That's what a man has to do."

The Kibei's wife added:

"Gee, I hope the day will come when we can go to the laundry and wash our clothes and not have the Hokoku people glaring at us."

On February 8, a Nisei woman stated: .

"When the so-and-so Hokoku go (to internment) we can't go and say, 'We're sorry your son was taken away.' You have to congratulate them!

"I heard some of them (Resegregationists) complimenting a family whose son was sent. They say they are true Japanese. The man said, [64] 'Next trip it will be my son.' They (Resegregationists) are just tickled pink.

"A week ago my husband met a friend who had a bozu hair cut (shaved head). He said, 'What, are you bozu, too?' 'Sh-h-h,' the friend said, 'This is camouflage. Otherwise nobody in my block will talk to me.' . . . I hear that in block 74 there are two girls who refused to become members of the (Resegregationists') girl's organization. All the other girls won't speak to them now."

On February 13, a Kibei informant stated:

"In the minds of the people of the Center has been the general impression that by going to Santa Fe they'll be recognized as aliens and they feel that their renunciation of citizenship is granted. Whereas if you are a gentleman enough to be peaceful and quiet, renunciation will not materialize."

On February 16, a Kibei girl told me:

"Many of the parents are trying to make their sons join the Hokoku (Young Men's Fatherland Group). This is especially in the Manzanar section. One boy has a duck

cut and wears zoot suit clothes. His parents are trying to make him join the Hokoku. He says, 'Golly, I can't do that. How would I look in Santa Fe?'"

On February 28, a Nisei girl stated:

"I know some poor kids, their parents made them shave their heads But they still roll up their jeans to show their Argyle socks (Argyle socks were, evidently, the height of style for adolescent Nisei). A lot of kids say that when they're 18 they'll have to join the Hokoku due to their parents' pressure and the draft."

On February 28, my most reliable informant, a very blunt man, stated:

"Many Issei and families are forcing their sons to join the Hokoku-dan merely to escape the draft. I told them, when they get back to Japan they will use some means to keep their sons out of the Japanese Army. They were surprized to hear me say that."

In my opinion anxiety and panic reached a peak in mid-February immediately after the internment of February 11, when most of the members of the Young Men's Fatherland Group were removed from the Center. I was [65] assured by several informants that the remaining Resegregationists on February 12, had held a great rally in the Manzanar section. At this rally, it was reported, the people had been told that all citizens who were not members of the Young Men's Fatherland Group (which, of course, implied renunciation of citizenship) would be drafted by March 1. (At this time most renunciants who were not members of the Young Men's Fatherland Group had not yet received official notices that their renunciations were accepted by the Attorney General.) I cannot affirm

that such a meeting was held or that such statements were made. On February 13, however, I received a letter from a Kibei (dated February 12), part of which follows:

"The condition in the center has been most unsettled because of recent mass pick-ups (internments). The current rumor which in my opinion is the most vicious has it that unless people (young men, of course) sign up with the organization, they will be subject to draft by March of this year. There seems to be a great increase in the membership of said body. The people are under the impression that if you are a member, then your chance of renunciation is guaranteed; whereas, if you are not, you just don't know when you will be able to renounce your citizenship . . . The result if left unabated, will not only be tragic but dreadful. I don't know what you are able to do, but for justice's sake please take some action."

On February 13 I consulted my most reliable informant, an older Nisei, and asked him about these rumors. He stated:

"Those rumors are being heard about the camp. It has a tremendous effect. People are joining the Hokoku. It's going over like wildfire.

"The people are in a quandary and don't know what to do. They just follow the mob. I told people who came to me to ask for advice, 'You are like a bunch of sheep.'

"I gave those parents hell for being so jittering and not having a mind of their own. Renunciation is the only idea. Parents want their sons and daughters to renounce so they can go to Japan with them. It's fantastic in a way. . . .

"The trouble with most of the Japanese in this camp or in any other camp is that their mind is not made up. They swing from one side to the other. They will fluctuate." [66]

On February 19, a Nisei girl stated:

"A week ago the people were in hysterics . . . They were so excited. They said, 'The draft papers are right there . . . they'll draft us all over camp.'"

On February 13, a well educated and intelligent informant remarked:

"Sociologically speaking, I wonder if the people have not been tortured in their minds for so long—all they can think of is what's happening right in front of their eyes and they aren't looking forward to the future at all. None of them think of the fact that the war might end and then what position would they be in?"

When March 1 passed and no residents were drafted the acute excitement slowly abated. It was not until March 16, however, that the WRA announced to the residents that those activities in which Resegregationists had taken part, e. g., parades, drilling, bugling, were unlawful and prohibited.

I received relatively little information from informants on how the renunciation hearings were conducted. Several informants commented on the short time the hearings took; two mentioned that they had been treated courteously. One informant stated that an acquaintance who had had a hearing regretted that he felt obliged to make derogatory statements about the United States in order to make sure that he would be granted renunciation. No informant stated or implied that any kind of duress was exerted at the hearings by the hearing officers of the De-

partment of Justice. It is, however, my opinion and belief, that a great many citizens made false statements at their hearings, regarding their loyalty to Japan and to the Japanese emperor.

Much has been said in this document about persons who renounced their citizenship and almost nothing about those who did not. Undoubtedly, the substantial majority of persons who did not renounce their citizenship did so because their ties to the United States were so strong that they were able to resist the extraordinary sociological and psychological pressures which were brought to bear upon them. It is of interest, however, that, in my opinion, the most courageous and open adherents of non-renunciation were a group of young men who were alleged to be gamblers. These young men on two occasions openly defied the Young Men's Fatherland Group, which had publicly stigmatized them as "gamblers" and "sake-drinkers". [67] On December 15, 1944 a group of about a dozen of these alleged gamblers entered the block where the Young Men's Fatherland Group had its headquarters. One of the young men challenged the male secretary of the Resegregation Group and the two men fought with a mop and a piece of wood, while the other so-called gamblers stood about and held off a crowd of angry Resegregationists. The non-Resegregationist was victorious and after the fight he addressed the crowd, denouncing the Resegregationists as "ruining the young men in the Center." The leaders of the Resegregation Group, in my presence, voiced threats of extreme physical violence against this group of alleged gamblers but did not carry out the threats, since the issue was subordinated by the excitement which followed the internment of December 27, 1944.

I was well acquainted with a number of these alleged gamblers and, as far as I know, they did not renounce their citizenship. Their open defiance of the Resegregation Group was, in my opinion, intimately related to the fact that even though they were greatly outnumbered, they were, by the late fall of 1944, the only group in the Center which possessed the organization and man-power to risk physical combat with the Young Men's Fatherland Group. In regard to the fact that they did not renounce their citizenship, it is my opinion that they were hard-headed realists. On February 5, 1945, when many of my other informants were in a state of extreme anxiety fearing that their applications for renunciation would not be accepted, I had a long interview with members of this alleged gambling clique. They discussed the renunciation with comparative calm. One stated:

"After all, as I see it, my American citizenship isn't anymore good to me than a roll of toilet paper right now. In fact, it's less good. But I was born with it and I'm not going to give it up. It might come in handy later."

SUMMARY OF THE MOTIVATIONS WHICH LED TO RENUNCIATION OF CITIZENSHIP

As a student of anthropology and sociology I view the phenomena relevant to the renunciation of citizenship as a cumulative process which may be traced back to the evacuation. In the spring of 1942 citizens of the United States were removed from their homes and confined in relatively unpleasant surroundings under Military guard. Over a thousand Nisei who later renounced their citizenship were between the ages of 14 and 18 years [68] of age when they were evacuated. In the fall of 1943 over 6,000 citizens were segregated to the Tule Lake Center

and stigmatized as disloyal to the United States. Certain of the factors which motivated these persons to become segregees have been stated on pp. 7-8 of this document. There were, however, a substantial number of citizens who were taken to or remained in Tule Lake who, at the time of segregation and after segregation, held status as loyal citizens of the United States. To affirm that residence in the Tule Lake Center did not contribute to the development of confidence in the United States, to a sense of security in regard to the intentions of the United States, or to a realization of the rights and responsibilities of American citizen, is, in my opinion, a distinct understatement. From the early months of 1944, the Resegregation Group, whose leaders affirmed a fanatic loyalty to Japan, was permitted to propagandize the residents of the Center. In August of 1944 this organization made a deliberate attempt to draw American citizens residing in the Center into an auxiliary organization, the Young Men's Fatherland Group, which among its other aims listed the renunciation of American Citizenship. Numerous speeches of an extreme Japanese nationalistic character were delivered to the young men. They were urged to participate in militaristic exercises. In addition, the Resegregation Group had within its body a group of terrorists who repeatedly assaulted residents who criticized their policies and activities. Only one of these assailants, to my knowledge, was apprehended and punished. Furthermore, up until December of 1944 no authority at any time substantially attempted to discourage the Resegregation Group. Not until January of 1945 was the group formally reproved by the Department of Justice and not until March of 1945 did the WRA announce that the activities of this group were illegal and prohibited.

In addition to the influences described above, the residents of Tule Lake for almost four years had been subjected to the demoralizing effect of life in the Centers. They had suffered endless annoyances and irritations, which were all the more grievous because they were thought to be unjustified. They had been stigmatized by the press as rioters. Certain grave brutalities were said to have been committed upon Japanese young men by the WRA Internal Security on the night of November 4, 1943. (I have not [69] included these specific data in this document, though I have statements from young men who said they were beaten and statements from a doctor and a nurse's aide who attended them.) The residents, for a long period, had almost no opportunity for recreation and many who desired work could not be given employment. They had almost no contact with any friendly American of Caucasian ancestry. Their country, they thought, had cast them off and considered them "disloyal". In short, for almost four years, their experiences had been of a nature calculated to make them lose faith in America and blight their conception of the value of American citizenship.

Despite these experiences, I affirm, that to the best of my knowledge and belief, the very substantial majority of the citizen residents of Tule Lake in November of 1944 did not welcome the opportunity to renounce their citizenship. I affirm that to the best of my knowledge and belief were markedly un-enthusiastic. I affirm that the very substantial majority of residents in Tule Lake had resisted the frenzied efforts of the pro-Japanese groups

to force them to participate in pro-Japanese activities. I affirm that some individuals, who, in my opinion, possessed great moral and physical courage, spoke against these pro-Japanese activities and were brutally assaulted. I affirm that some rash youths still dared to wear their hair in a duck cut and that many young people still passionately desired to relocate when they could obtain the permission of their parents. With a full realization of the gravity of my statement, I, who knew those residents better than any other non-Japanese, affirm that to the best of my knowledge and belief, the substantial majority of citizen residents of Tule Lake, despite their detention and despite the extraordinary pressures to which they had been subjected, were capable of re-assuming the duties and responsibilities of American citizenship.

It is for the reasons stated above, that the events which followed the lifting of the exclusion order, are, in my opinion, peculiarly tragic. I have, I believe, made it clear that the residents of Tule Lake, owing to the statements made by the WRA, their interpretation of questions asked at the Army hearings, the internments, the rumors which followed the internments, and the irrational state of mind which accompanies long detention and isolation, tension, and insecurity, were thrown into a state [70] of panic. Most of them may be compared to a crowd of persons who believe that they are about to be bombed, rush to shelters, and find there officials whose statements they interpret as "Renounce your citizenship or you cannot enter." Fear of grave economic hardship, fear

of physical violence from hostile citizens of Caucasian ancestry, fear of family separation, the fear that non-renunciants would be drafted, to which were added tremendous parental and familial pressures based on these fears were the major motivations of renunciation. During the months of March, April, and May of 1945, the families of internees continued to boast of their impending "safety" and to taunt non-members and persons who had not renounced their citizenship with the imminence of involuntary relocation.

At the time of this panic I was convinced—and I so stated to the hearing officers of the Department of Justice—that the great majority of residents were not renouncing their citizenship out of loyalty to Japan. I was also convinced that very many of the residents did not appreciate the gravity of their act and later would attempt to get their citizenship back. Many residents assured me, I believe in all sincerity, that renunciation was like the Military Questionnaire and the Segregation, i. e., they could change their minds. Some assured me that their hearings before the hearing officers of the Department of Justice were brief and therefore they were sure that later on they would be given a longer and more thorough hearing. This was, in short, not the first time that they had been given a hearing which they were assured was very grave and which, later on, had signified little. Indeed, at the time of segregation they were assured by the WRA that they would be allowed to remain in the Center until the end of the war.

In my opinion, the threat of immediate physical violence from Japanese residents was a relatively minor motivation toward renunciation of citizenship. I was told frequently that the leaders of the Young Men's Fatherland Group had forced people to renounce their citizenship. I have no evidence, however, that the force referred to implied physical violence. It is my opinion that members of the Young Men's Fatherland Group who refused to renounce their citizenship stood in danger of physical violence and were aware of this. Certain individuals who lived in blocks where many Resegregationists also resided may well have been threatened with violence if [71] they did not renounce even though they were not members of the Resegregation Group. During my residence in the Center, I collected no specific data that such threats were made.

During my residence in the Center no Japanese resident stated or implied that the hearing officers of the Department of Justice or any member of the WRA administrative staff employed duress at the renunciation hearings to influence residents of Tule Lake to renounce their citizenship.

/s/ ROSALIE HANKEY

Subscribed and sworn to before me this 8th day of January, 1947.

/s/ EDWARD T. DUFFY

Notary Public

My commission expires Oct. 9, 1948. [72]

District of Columbia—ss.

AFFIDAVIT

John L. Burling, being sworn, deposes and says as follows:

I am a member of the bar of the State of New York and of the Supreme Court of the United States. From July 1, 1939 until June 3, 1946 I was employed by the United States Department of Justice. At all times relevant to this suit I was assigned to the Alien Enemy Control Unit of the War Division of the Department of Justice, and during substantially all of the relevant period I had the title of Assistant to the Director of that Unit. The Alien Enemy Control Unit had assigned to it not only the administration of the Alien Enemy Act of 1798 but also cognate matters relating to the internal security of the United States and to exceptional wartime security controls. At all times from January 1942 until the surrender of Japan, the Unit was active for the Department of Justice in problems relating to Japanese aliens resident in the United States and to American citizens of Japanese ancestry resident before the war on the West Coast. From January 1942, when agitation in favor of evacuation of all persons of Japanese ancestry arose on the West Coast, onward, I was active in the Department of Justice in dealing with the various problems to which that agitation led, including the ultimate removal from the West Coast by military authorities of all persons of Japanese ancestry. The Department of Justice and, through it, I, personally, was aware of substantially all of the governmental developments and the policy determinations leading to that evacuation and to the creation of the War Relocation Authority. Thereafter, I was one of the officials of the

Department of Justice who was most closely in touch with the officials of the War Relocation Authority and who sought to coordinate [73] the activities of the Department of Justice with that agency where appropriate. It may be said, in general, that I am thoroughly familiar with the problems created by the evacuation and particularly with the problems related to internal security, many of which problems arose especially at the Tule Lake Center of the War Relocation Authority located at Modoc County, California.

Subsection (i) of Section 401 of the Nationality Code which authorizes renunciation of American citizenship under certain circumstances was added to the Nationality Code of 1940 by Act of July 1, 1944. The enactment of that law came about under the following circumstances:

In the early winter of 1943, coupled with an effort to recruit combat teams of American citizens of Japanese ancestry to serve with the armed forces, the War Relocation Authority undertook to have a questionnaire or questionnaires filled out by a large number of the residents of its ten centers into which the very great majority of persons of Japanese ancestry previously residing on the West Coast had been moved. This questionnaire included questions relating to loyalty to the United States on the part of both aliens and citizens. Due probably in part to the manner in which the questionnaire was handled both by military authorities and by officials of the War Relocation Authority and probably in part to distress at having been moved into these guarded, barbed-wire-enclosed camps and probably in part to genuine loyalty on the part of some toward Japan, a considerable number of persons, both citizens and aliens, either answered the questions pertaining to loyalty in the negative or declined to answer.

Thereafter, in the spring of 1943, the War Relocation Authority encountered unfavorable publicity in certain sections of the press. At the same time a subcommittee of the House Select Committee to Investigate Un-American Activities conducted an investigation into the policies of the War Relocation Authority. In the course of this investigation and in the press the War Relocation Authority was very [74] strongly urged to segregate those whom it deemed disloyal to the United States from those whom it deemed loyal. The preparation for this segregation process was carried on in the spring and summer of 1943. Very generally, it may be said that those persons who had answered the loyalty question above referred to in the negative and who failed subsequently to withdraw their negative answer and to substitute an affirmative answer were scheduled for segregation. Similarly, persons who requested to be repatriated to Japan were scheduled for segregation. A small number of others as to whom there was specific security information provided by one or more Government agencies or who failed to persuade the War Relocation Authority of the genuineness of their amendment to the negative answer to the loyalty questionnaire were scheduled for segregation. The very great majority of all persons designated for segregation, however, received such designation as a result of either a negative loyalty answer or a request for repatriation. In addition to adults selected for segregation, minor children of segregants and family members of segregants who desired to remain in the family unit were permitted to be segregated.

Prior to the completion of the preparation of lists of persons designated for segregation, the War Relocation Authority announced that the Tule Lake Center in Modoc County, California, which was at that time one of the

Authority's ten relocation centers, would be selected as the segregation center. Inasmuch as many of the persons of Japanese ancestry who had been moved by the Army first from their homes to Army camps and then from Army camps to War Relocation Authority centers regarded such movement as an exceptional hardship, a considerable number of persons who had already been moved to the Tule Lake Center in 1942 did not desire to move to another Center in the process of transforming the Tule Lake Center from a relocation center to a segregation center and, therefore, desired [75] to remain there notwithstanding their knowledge that the Tule Lake Center was to become the segregation center for persons of Japanese loyalty. The precise number of persons who would not have been segregated by the War Relocation Authority's criteria who remained in Tule Lake because of unwillingness to move is not known but it was thought to be slightly more than 6000.

In general, therefore, it may be seen that few of the persons segregated were segregated against their will. Segregants had ordinarily elected that status either by giving and adhering to a negative loyalty answer or by making and not withdrawing a request for repatriation or by refusing to leave Tule Lake when the status of that center was changed. It was announced throughout all centers at the time of segregation that the principal purpose of the War Relocation Authority would be to relocate in American life the evacuees who were not segregated but that it was not intended that any relocation be carried on directly from the Tule Lake Center (although in some exceptional cases persons in the Tule Lake Center might be moved to relocation centers for further processing). The general spirit in which segregation was carried on

both by the War Relocation Authority and by the evacuees themselves was that those persons of Japanese ancestry, whether United States citizens or aliens, who desired to look to the United States for their future, should remain in or go to one of the nine relocation centers, while those persons of Japanese ancestry, whether United States citizens or aliens, who desired to look to Japan for their future, should go to the Tule Lake Segregation Center until exchanged or repatriated.

In 1942 and again in 1943 the exchange vessel *Gripsholm* made voyages between the United States and neutral ports at which exchanges took place of Japanese returning to Japan from the United States and of United States citizens returning to the United States from the Orient. Although these exchanges were extremely difficult to arrange, hope to arrange further exchanges in order to save the lives of Americans held [76] in Asia was never abandoned by the State Department and likewise hope to return to Japan, even during the war, was never abandoned by those desiring repatriation. Many of those who accepted segregation in the summer of 1943 did not anticipate a long stay in the Tule Lake Center but hoped to be returned to Japan by diplomatic exchange.

With the exception of infants, therefore, and family members incapable of independent decision, substantially all persons who went to or remained in Tule Lake after the segregation date in the autumn of 1943 had indicated an acceptance of a Japanese dominated future which involved going to or remaining in a camp guarded with barbed wire and sentry towers as opposed to the option of going to or remaining in one of the nine relocation centers (only a few of which were so guarded) to await relocation at liberty in the United States. These persons

also knowingly accepted the stigma of disloyalty to the United States.

The physical movement of persons among the various centers commenced in the autumn of 1943 and was substantially complete on November 1, 1943. On that date there were approximately 18,000 persons of Japanese ancestry living in the Tule Lake Center, many of whom had come from other camps, some of whom comprised the leadership of the pro-Japanese factions of each of the ten relocation centers and who, to some extent, thereupon commenced to compete with each other for leadership of the new segregation center.

Prior to November 1, 1943 a number of grievances had been urged by at least some of the residents of the Tule Lake Center relating to living conditions, food and the like. On November 1, 1943 Dillon S. Myer, the National Director of the War Relocation Authority, was at the Center on an inspection trip. On that day a crowd of at least a thousand persons of Japanese ancestry gathered around the administration building in such a way as to create the impression among some Caucasian members of the War Relocation Authority staff that the crowd was imprisoning the administrative officials within the administrative [77] building. Leaders of this crowd then conferred with Mr. Myer and with Mr. Ray O. Best, the Director of the Tule Lake Center, and further pressed demands. As a result of the pressure put upon the administrative officials by the crowd, Mr. Myer addressed the crowd from the porch of the building. During this time some members of the staff were physically prevented from entering or leaving the area surrounding the building and also during this period some persons of Japanese ancestry walked through corridors of the center hospital

against orders and, as a result of that incident, a scuffle ensued between the chief physician of the center and persons of Japanese ancestry. The physician was knocked unconscious, dragged outside and severely beaten. Four days later a group of youths entered the area in which motor equipment was parked which they were forbidden to enter at night. They thereupon approached the house of Mr. Best in such a manner as to cause him to believe he was about to be attacked and he then requested the assistance of the Military Police who were camped immediately outside the main gate. The soldiers entered on the night of November 4 completely equipped with armored cars, gas, machine guns and the like and assumed control of the camp.

The reverberations of these two incidents were immediate. The press called great attention to what it described as rioting. A number of employees of the War Relocation Authority became afraid and declined to remain within the fenced area. A committee of the California legislature took testimony from some of these persons and others having knowledge of the incidents, which testimony was strongly critical of the War Relocation Authority and insistent that more stringent measures be taken. Within a month the same subcommittee of the House Select Committee to Investigate Un-American Activities which had held hearings in the spring held additional hearings concerning the Tule Lake incident which hearings also were markedly critical of the situation as it then existed. [78]

In my capacity as the Department of Justice officer designated to keep in touch with this general problem, I attended several of these hearings held in Washington, was in close touch with the officers of the War Relocation Authority and was generally familiar with developments.

It was the opinion of other officers of the Department, and it was my own, that it would be necessary to modify the manner in which the problem was being dealt with. As the problem was envisaged in November 1943 by the then Attorney General, Francis Biddle, by my immediate superior, the Director of the Alien Enemy Control Unit, Edward J. Ennis, and by me, judging from the general information available to the Department of Justice and particularly the testimony at the various hearings and the statements made to us by officers of the War Relocation Authority, especially Dillon S. Myer, it was as follows:

Whether out of necessity or out of no necessity, wisely or unwisely, constitutionally or unconstitutionally, the Army had in fact moved over 100,000 persons of Japanese ancestry, over two-thirds of whom were American citizens, out of their homes and into camps. Thereafter, the War Relocation Authority had carried out what might be termed a voluntary segregation, as a result of which those who for one reason or another wished to be in a camp of persons known to be loyal to Japan were to live at the Tule Lake Center. This camp at that time housed 18,000 persons, some of whom could be presumed to have been at all times loyal to Japan. Some others of them could be presumed to have been so seriously shocked and distressed at the entirely unprecedented act of moving and detaining a group of persons selected solely on a racial basis and at its consequent great economic and social distress and at the actual hardships of moving and being placed in unprepared, crude barracks as to have become disaffected. [79] An unknown number, probably in excess of 2,000, of the inhabitants were what is known as Kibei, which

is the term given in Japanese to young men (and very occasionally women) who have been born in the United States and who have been sent to Japan to be educated and who returned to the United States only after having spent most of their formative years in Japan. A very large proportion of these Kibei were wholly Japanese in culture and education and could speak little or no English.

Within this population of 18,000 (including women and children) there was undoubtedly some group of persons whose loyalties were to Japan and who desired to create trouble and difficulty for the United States Government. Although the exact facts are still in dispute, undoubtedly some degree of physical force was employed by Japanese loyalist elements on November 1 and 4, 1943. It was the stated opinion of Mr. Myer that there was one or two thousand men in the Tule Lake Center who were at that time loyal to Japan. It was also his opinion that many of these were to be found among the Kibei, some of whom were Japanese by race, ties of family, ties of friendship, education and language and who were United States citizens and Americans solely as a matter of place of birth. The exigencies of the war and the reasonable demands of the public that persons of Japanese ancestry avowedly loyal to Japan not be permitted at complete liberty within the United States made it obviously impossible for the United States Government or any agency thereof to embark on any program of releasing from custody this small inner group of segregants who made no secret whatever of their loyalty to Japan and of their desire to see that country defeat the United States. [80]

The Department of Justice regarded it as a patent necessity that that small group, however identified or defined, should be detained. This, however, raised a most serious constitutional problem. It is my understanding of the feeling and belief of the then Attorney General and of his advisers that the detention of American citizens not charged with crime even in wartime on the basis of an administrative determination of disloyalty under circumstances not sufficiently grave to warrant the declaration of martial law was repugnant not only to the Constitution but to the basic principles of liberty upon which this Government was founded. It was recalled that never before in this country had such detention been resorted to and that the right of habeas corpus went back in British law to Magna Carta. (It was known, of course, that the British during the existing war had authorized a cabinet officer to detain British subjects on security grounds without judicial review but it was hoped that that extraordinary departure from all prior concepts of civil liberties would not be necessary in this country.) The dilemma posed, therefore, was that it was imperative to detain this group of admittedly disloyal American citizens of Japanese ancestry. Martial law might have made the detention of the group lawful but it is extremely doubtful whether conditions on the West Coast in 1943 were such as to warrant a declaration of martial law. Thus there appeared to be no way by which to detain them without doing violence to basic constitutional principles.

It was the belief of the officials of the Department of Justice considering this matter that the way out of this dilemma was to be found in the attitude and conduct of the members of disloyal group themselves. It was believed that this group was so openly pro-Japanese and so

desirous of making a demonstration of that loyalty that, if given an opportunity, they would voluntarily abandon their United States citizenship, and thereby voluntarily abandon their standing as citizens to object to the detention which their conduct rendered imperative. It was further believed in the Department of Justice that Japanese law provided that a person born in the United [81] States of Japanese citizen parents prior to December 1, 1924 automatically acquired Japanese citizenship and retained it unless he affirmatively divested himself thereof and that such a person born after that date might acquire Japanese citizenship through registration of his birth by his parents with the Japanese Consul or consular agent. It was, therefore, thought proper to presume, until the presumption was rebutted by competent evidence, that those persons of Japanese ancestry who voluntarily gave up their American citizenship and asserted their loyalty to Japan were in legal fact dual nationals. As such, when their United States citizenship ceased to exist, their Japanese nationality remained and they were, accordingly, alien enemies under the provisions of the Alien Enemy Act of 1798 (Title 50, USC Section 21 et seq.).

Thus, the proposal that American citizens should be permitted, in time of war, to renounce their citizenship as an act of their own free will, subject only to the control that the Attorney General might disapprove the renunciation if it affirmatively appeared to him to be contrary to the interests of national defense, was made for the purpose of devising a system of controlling the disloyal and riotous elements at Tule Lake while not doing injury to the Constitution and to the traditions of the Nation.

This problem became acutely one for the Attorney General on December 8, 1943. Up to that time he had

never been asked to give nor had he given an opinion as to the constitutionality of the detention of American citizens of Japanese ancestry in the various camps. On that date a request was addressed to him by the Chairman of the subcommittee of the House Select Committee to Investigate Un-American Activities to appear before that subcommittee to make recommendations concerning what should be done concerning the general problem existing at Tule Lake. The Attorney General was then confronted with the necessity of making a recommendation either for the detention [82] of American citizens not charged with crime and not under martial law by an administrative act of a military or civil official, or of recommending a means for accomplishing the detention of this group without violating the Constitution. In this situation Attorney General Biddle accepted the recommendation made to him by his advisers named above and on December 9, 1943 he recommended the enactment of legislation to permit voluntary renunciation of citizenship. Thereafter a bill was drafted which became the Act of July 1, 1944, which is subsection (i) to Section 401 of the Nationality Act of 1940, as amended. The Attorney General testified again in favor of this legislation before the House Committee on Immigration in January 1944 and the legislation was introduced, and passed.

While this legislation was pending and while the Army was gradually returning the control of the Tule Lake Center to War Relocation Authority officials following the incidents of November 1943, the leadership of the persons of Japanese ancestry in the Tule Lake Center began to change and a group arose which did not favor violent action against the administration because of food, housing, etc., but which favored correct relations with the

administration coupled with spiritual and physical preparation for return to Japan. This latter group reasoned that Japanese victory or at least repatriation was near and that the true Japanese should be prepared to resume life in Japan and that the young men should be prepared to fight for the Japanese Emperor. This group felt that the presence within the center of persons who were not truly loyal to Japan but who were loyal to the United States or who had remained out of inertia or who were waiting to see how the war would end were undesirables. The group, accordingly, demanded what was called "resegregation", by which was meant a second segregation and removal from Tule Lake of those whose loyalty to Japan was questionable. Members of the undesirable group were called "inu" or "dogs". Petitions for resegregation were circulated and were sent to the War Relocation Authority; to the Secretary of the Interior, [83] the Department of Justice, the Department of State and to the Spanish Legation in Washington which was the Legation of the protecting power for Japanese interests in this country under international law. At least 7,000 signatures were affixed to these petitions.

After these petitions had been procured, the group which had procured them, namely the group of persons most eager to return to Japan and least willing to associate with other persons of Japanese ancestry not fanatically loyal to the Emperor, formed themselves into a society for the general promotion of repatriation and of preparation for return. One of the principal concerns of this group was that American-born children other than Kibei had been exposed to American education and American life and therefore were not adequately trained to return to Japan. This group set out to provide education in ways of Japanese thinking, history and Japanese culture and the like.

The Japanese Language Schools, which existed parallel to a system of American schools in the center, to a considerable extent cooperated with this group in preparing the children for return to Japan. Inasmuch as it was the assumption of many of the members of the staff of the War Relocation Authority that the center population would go to Japan either by exchange or at the conclusion of the war, this preparation of Americanized children for Japanese life was not universally regarded as evil. One school which was conducted at the center until January 1943 was called the Greater East Asia School after the notorious Greater East Asia Co-Prosperity Sphere.

This organization of persons loyal to Japan underwent a number of changes of name but continued to exist substantially until the end of the war, although from December 1944 onward efforts were made to stamp it out.

At some undetermined time in the summer of 1944 this organization, which was principally but not entirely composed of aliens, sponsored another organization for young men roughly between the ages of 18 and 30 who were principally but not entirely citizens [84] (although many of them were Kibei). This organization in some respects was independent and in some respects bore the relation to the older one of an auxiliary to a parent organization. This organization also had several Japanese names at different times, the general meaning of all of which was Young Men's Fatherland Association. From midsummer 1944 until January 1945, when efforts were made to stamp it out by removing all of its members to Department of Justice internment camps, this organization became steadily more openly pro-Japanese and more active in flaunting these activities in the face of the American authorities. The existence of the two Japanese patriotic organizations

and of their more and more open activities was not known to the officials of the Department of Justice above-named until December 5, 1944.

The bill permitting renunciation of citizenship in time of war became law on July 1, 1944. Considerable time was spent in preparing regulations and forms to implement this statute and it was not until the autumn of 1944 that the Department of Justice was prepared to administer it. Commencing in July 1944 individual letters and group petitions began to come in to the Department of Justice containing requests for permission to renounce citizenship. After the proper forms for applying for such permission were mailed out in October 1944, several hundred typewritten copies of such forms were mailed from the Tule Lake Post Office to the Department. These were nearly identical and seemed to have been prepared by the same typist. At the same time petitions were received for permission to renounce bearing the signatures of hundreds of persons. Because of the ease with which the signatures to petitions might be coerced or forged by anyone interested, some concern was felt by officials of the Department of Justice familiar with the matter (who by this time included, in addition to those named above, Assistant Attorney General Herbert Wechsler, in charge of the War Division). As a result, it was [85] determined that all available steps should be taken to insure that no person renounced his citizenship unless he understood what he was doing and desired to do it.

The Act itself provides for renunciation merely by appearing before an official named by the Attorney General and by signing a designated form. There is no requirement for any determination whatever other than the implicit ones that the renunciant knows what he is doing

and wishes to do it, and the stated condition in the statute that the renunciation be found not contrary to the interests of national defense. At one time, the Attorney General's advisers considered setting up very simple forms which could have been executed rapidly in the presence of any competently trained Government clerk. In order to slow down the process, however, for the precise purpose of minimizing the possibility of coercion or mistake, the regulations were made far more cumbersome than necessary. Pursuant to the regulations and to the Department's interpretation of them, it was necessary for an applicant first to write to the Department in Washington requesting a form. Upon receipt of the form it was then necessary for the applicant to fill out and return it to the Department requesting permission to renounce. Thereafter the regulations called for a hearing to be held, and in practice, as will be said further, that hearing was far fuller than necessary to fulfill the statutory requirements.

In order to determine whether or not coercion existed, I was sent by Assistant Attorney General Wechsler to the Tule Lake Center, at which I arrived on December 5, 1944. On that date I and, through me, the officials of the Department of Justice first learned of the existence of the disloyal groups above referred to. At the outset of my investigation at Tule Lake I arranged to have a hearing room set aside for my sole use and I was assigned a Caucasian interpreter and a Caucasian stenographer by the War Relocation Authority. [86] I first called in and questioned separately about 62 persons who had filled in the typewritten copies of the printed form requesting permission to renounce citizenship, above referred to, and which officials in Washington had feared might indicate coercion. I questioned each of these persons in detail as

to their desire to renounce citizenship, their reasons therefor and the circumstances surrounding the filing by them of the typewritten forms.

Although each person was alone with no other person of Japanese ancestry in the room and although each person was carefully questioned, every person questioned stated without hesitation that it was his or her own wish to renounce American citizenship so as to be solely Japanese. Substantially all of these persons indicated a desire to return immediately to Japan and substantially all of those who were questioned about it stated they desired to see Japan win the war. No one stated that he had been forced to sign the form and most of them stated that they had procured the form through friends. A few of them asserted that the form had been passed out to them by volunteers but that, since they had been trying to get forms from Washington in vain, they regarded this as a helpful service. The names of the persons who had typed the forms were obtained by me and they also were questioned. They admitted typing the forms but stated that they did this to help out friends and others desiring renunciation. They explained that many persons were distressed at the slowness of the Department of Justice in putting the renunciation program into operation and that they had typed the forms to allay the impatience of the prospective renunciants. In the course of this exhaustive investigation, all of which is available in stenographic transcripts, I was able to find no hint of coercion as I understood that term as a lawyer. I did, however, learn of the organizations and did learn that they favored renunciation. I also heard other cases of individuals who wished to renounce for reasons not directly related to loyalty, [87] such as desire to return to Japan with a husband or parent. These considerations are discussed below.

In December 1945 I learned that the young men's patriotic association had procured a considerable number of bugles and that they were conducting exercises each morning at 6 o'clock which were a combination of gymnastics, drilling in formation and patriotic observances. (On the evening of December 8, which was the anniversary of the attack on Pearl Harbor as measured by Japanese dates, a large memorial gathering was held in the center.) The young men wore a uniform at that time consisting of blue work trousers, a white sweatshirt and a white head band. It was estimated by officials of the center to whom I talked that about a thousand young men participated in these exercises each morning. The week-day exercises were engaged in by the young men in small groups and on Sunday at a later hour all the young people would exercise together. In addition to the exercising, they would engage in bowing toward the Imperial Palace and calisthenics which, I was informed, commemorated historic Japanese events and heroes. Much of the calisthenics, furthermore, closely resembled actual military drill.

Because of the obviously undesirable nature of this organization, I undertook to ascertain the identity of the leaders thereof with the view to permitting them to renounce their citizenship first so as to cause them to become alien enemies, at which time they might be apprehended upon alien enemy process and interned in Department of Justice internment camps for alien enemies. In a series of hearings which I conducted in the cases of the leaders I learned that the organization was entirely open in its activities and that it had an office in one of the buildings regularly assigned it, that inside this office the Rising Sun flag was displayed and that there was a sign in Japanese that anyone who spoke English on the [88]

premises would be fined ten cents. These leaders were quite open in stating to me that their purpose was to prepare the young men so that when they should be exchanged they would be prepared to fight in the Japanese Army. They stated to me that they understood that when the segregants had arrived at Tule Lake they had made up their minds to go to Japan and, since they desired to go to Japan, it was only reasonable that they should train themselves to be Japanese.

In order to expedite the removal of the leaders, both of the parent league of pro-Japanese fanatics and of the young men's auxiliary, I prepared a list, by means of interrogation, of all of the leaders in the two groups and then called in each of them. Those who were citizens were asked whether they had applied for renunciation and substantially without exception they had. In every case they voluntarily executed the form for renunciation of citizenship.

On or about December 23, 1944 I returned to Washington and reported to Edward J. Ennis, Assistant Attorney General Wechsler and Attorney General Biddle. On my recommendation the Attorney General approved the renunciation of citizenship of the citizen leaders of the group referred to and authorized the apprehension on alien enemy process of those who had originally been aliens, as well as those who became alien enemies through renunciation. I reported to these officials the existence of the very active pro-Japanese movements in the center. It was agreed that the two organizations must be dissolved and that the measure most likely to succeed was the internment as alien enemies of the leaders. It was further agreed that if additional leaders should be chosen to replace those interned they also should be removed to Department of Justice internment camps.

Attorney General Biddle then directed me to arrange to return to Tule Lake in charge of a Department of Justice mission to handle the processing of renunciation applications. In order that the operation might be carried on as carefully and as intelligently as possible, I was instructed not to rely on persons with merely clerical [89] training but to take with me from Washington trained personnel. I did take from Washington three attorneys from the Alien Enemy Control Unit and one officer from that Unit who was not an attorney but who had been assigned to the Unit only during the war and who was regularly a high career officer of the Immigration and Naturalization Service. In addition, six stenographers and a clerk were dispatched to Tule Lake from various offices of the Department of Justice.

On December 19, 1944, shortly after I had left Tule Lake, Major General H. C. Pratt, Commanding General, Western Defense Command, withdrew the public proclamations and orders of 1942 which had ordered the exclusion of all persons of Japanese ancestry from the West Coast area and permitted all such persons to return to California with the exception only of named individuals who were served with individual exclusion orders. Simultaneously the War Relocation Authority issued an announcement throughout all of its centers that all the relocation centers would be closed within approximately one year or by December 31, 1945. There is a dispute as to whether it was intended by Dillon S. Myer, the Director of the War Relocation Authority, that this be understood at Tule Lake as an announcement that that center would be closed on or before the date set, but there can be no dispute as to the fact that there was an announcement by the War Relocation Authority officials at Tule Lake to

the residents of that camp that it likewise would be closed within one year and that all of the War Relocation Authority staff at that center and all of the persons confined in the center understood that the camp was to be closed within a year. For reasons which will be discussed below, the announcement that the center would be closed within one year coincided with an extremely sharp upswing in the number of applications for permission to renounce citizenship filed with the Department of Justice. The announcement as to the closing of the center was made on December 22, 1944. December 25 fell on a Monday. On December 26 approximately 2,000 pieces of mail were received in the Department from Tule Lake indicating a desire to renounce citizenship. [90]

In the first week of January 1945 I left Washington for California by train with the following hearing officers: Charles M. Rothstein, Joseph J. Shevlin, Ollie Collins and Lillian C. Scott. I devoted a considerable part of the time spent in travel in an endeavor to give these hearing officers as full a background concerning the general problem of the Japanese evacuation as I could. I told them in detail of the agitation arising in 1942, of the fact that there was no evidence of any espionage or sabotage committed by any person of Japanese ancestry either at the time of Pearl Harbor or thereafter. I told them of the hardships caused by the evacuation and of the circumstances surrounding the segregation. I particularly told them that it was my opinion that the loyalty questionnaire had been ineptly handled and that a negative answer to the loyalty question was not necessarily indicative of disloyalty but might be due to mistake, confusion or resentment over the evacuation. I further explicitly told them that it was my own opinion that the entire evacu-

ation had been a tragic mistake due almost entirely to the unfortunate giving way by certain military and other officials of the Government to an unreasoned wave of public hysteria. I further told them that the segregation of 1943 could not be relied on in every case as a positive determination of Japanese loyalty but that it had been in most cases a voluntary choice which in fact might have been dictated by such loyalty or by a number of other factors such as desire to keep a family unit together, resentment at treatment given to United States citizens by their Government, a desire to avoid the draft, etc., etc.

Coming specifically to the task of administering the renunciation statute, I told the hearing officers of the strong pro-Japanese pressure in the center and instructed them to be particularly diligent in endeavoring to detect any sign of coercion. I then told them that, even though they were satisfied that a particular applicant [91] for renunciation might fully understand the nature of the act and at the moment desire to accomplish it, the hearing officer nevertheless was not bound to recommend approval if he felt in the particular case that the subject was not truly loyal to Japan and was imbued with American principles, ideals and culture but was acting because of some unusually difficult family situation or because of resentment at his evacuation and subsequent detention. In such cases the hearing officers were instructed neither to approve nor to disapprove but to dictate a memorandum on the record so that the entire file, the transcript of the hearing and the hearing officer's memorandum might be studied in Washington. With the exception of this instruction, the hearing officers were told that, as a legal matter, all that was necessary was for the applicant to come before the officer, satisfy the officer that he understood what he was

doing and wished to do it and then sign the renunciation form. Nevertheless fuller and more careful hearings were desired. The purposes of these hearings, they were told, were threefold:

First, to explore every possibility of coercion. If any sign of coercion were noted, the applicant was, of course, not to be permitted to sign the form.

Second, to determine whether there was any group which, although voluntarily renouncing, nevertheless was so clearly pro-American and so clearly acting solely out of bitterness that some change in the regulations or in the statute should be considered.

Third, to obtain information concerning the entire problem of the administration of the Tule Lake Center since at that time it was thought not unlikely that the center would be transferred to the Department of Justice to administer.

With respect to the general issue of coercion, I specifically explained to the hearing officers that renunciation, as any other legal act, would be coerced and hence void if it were done under imminent [92] or immediate threat of physical injury to one's self or to a member of one's family. I gave this definition of the legal concept of coercion and went further to say that if there was any indication whatever in any case that renunciation was being made under any threat at all without regard to its imminence, the applicant for renunciation should not be permitted to sign the form and that the matter should be reported to me for further consideration. I said further, however, that the law gave every citizen of the United States in time of war a right to renounce his citizenship subject only to the proviso that, if it affirmatively appeared that such

renunciation would be contrary to the interests of national defense, then the Attorney General might disapprove the renunciation. For that reason it was not legally relevant to determine the ultimate motivation which might lead a renunciant to abandon his citizenship beyond the determination that he understood what he was doing and at that moment desired to do it. I said that many motivations other than ultimate loyalty to Japan might be at work and that, for example, persons might renounce because they believed that all aliens would be repatriated at the end of the war and because they desired to remain with their alien parents. A renunciant might renounce because he was the eldest son and, as such, was responsible for the family property in Japan. Renunciants might abandon their citizenship because their parents feared that otherwise they would be drafted or forced out of the Tule Lake Center. I said that these reasons were not grounds for determining that renunciation was coerced and that an intentional act of renunciation free from fear was as valid if done for the motive of remaining with a parent as if done out of the truest loyalty to Japan. I stated to the hearing officers that the legal act of renunciation was comparable to the legal act of marriage and that a renunciant had legal capacity to renounce even though he was not loyal to Japan, just as a man or woman might [93] have legal capacity to marry even though not devoted to the proposed spouse. In conclusion, I repeated to the hearing officers the instructions given me by Assistant Attorney General Wechsler which were to the effect that the duty of the hearing officer was comparable to the duty of a careful and humane judge in accepting a plea of guilty and that just as a judge will accept a plea of guilty if he is satisfied that the accused understands

the nature of the charge and the nature of his response thereto and is not in fear of injury either to himself or to a member of his family without regard to what reasoning leads the accused to make the plea, similarly the sole legal issue before a hearing officer was whether renunciation was a voluntary and comprehended act.

The Department of Justice mission arrived at Tule Lake on January 11, 1945. A special office building outside of the inner fence of the center was made available which consisted of a large waiting room, five hearing rooms and a stenographer's room. The War Relocation Authority made available to the mission two Caucasian interpreters, both of whom were women who had served as school-teachers in Japan. The mission was also assigned one guard in the building and another guard to drive renunciants in an automobile from the gate to the building. The procedure which was followed was that the Department of Justice staff would, from the list of persons who had applied for permission to renounce, prepare a calendar or schedule of persons to be heard 24 hours in advance. This list would be given to the internal security officers of the War Relocation Authority. They would inform the applicants that their cases would be heard on the following day at an approximate time. Each applicant would then present himself at one of the gates and in course would be let through the gate and driven by automobile to the hearing building. He would then come into the waiting room and would be given a number by the clerk. When his turn came he would be escorted alone to one of the hearing rooms where there would be present the hearing officer, the stenographer [94] and, if necessary, one of the Caucasian interpreters above referred to. With the exception of a few cases where women found it necessary

to bring children with them, no person of Japanese descent other than the renunciant was ever permitted in the hearing room. On a few occasions more than one hearing officer would be present during a hearing and in at most twenty cases out of the more than 5,000 hearings held an anthropologist employed by the War Relocation Authority, Dr. Marvin Opler, was present. So far as I am aware, no other employee of the War Relocation Authority was present at any hearing. Although the lengths of the hearings varied from a few minutes to more than an hour and although the line of questioning was varied, where there was no particular information desired by the hearing officer for policy or security reasons and where the case appeared usual, the practice was for the hearing officer first to obtain the necessary statistical facts, such as name, place of birth and the like, from the renunciant and for the officer then to show the renunciant his application for permission to renounce. In each case the officer inquired whether the signature was that of the applicant and then asked the applicant why he had signed it. He was then asked in each case whether he signed it of his own free will or whether he had been instructed or ordered to sign. There then followed a period of questioning designed to explore the renunciant's reason for desiring renunciation, both in an effort to detect coercion and to make sure that the legal effect of the act was clear. When this examination was complete the renunciant would be shown the final form and asked whether he understood it. If he did, he would be shown where to sign the form and once more told that it was his own choice and that no one could require him to sign. He was also told that if he did sign he would forever cease to be an American citizen or to be entitled to any of the rights of citizens and that he would in all probability be returned to Japan

at the close of the war. He was further told that if he did return to [95] Japan he would in all probability never be allowed to return to the United States. When these matters had been made clear the hearing officer would either endorse his recommendation of approval of the renunciation as not contrary to the interests of national defense or, in a few cases, would dictate a memorandum indicating that the case should be further reviewed in Washington. Although in the cases of three Japanese accorded renunciation hearings in Hawaii and three or four cases of persons not of Japanese ancestry and having no relation to the instant cases, the Attorney General has authorized renunciation hearings to be held by other officers, no person of Japanese ancestry has ever renounced his citizenship in the continental United States before any hearing officer other than affiant, Charles M. Rothstein, Joseph J. Shevlin, Ollie Collins or Lillian C. Scott. Every renunciation hearing conducted by any of these persons followed the general pattern stated here. Every renunciation hearing was taken down by a stenographer and, to the best of my knowledge and belief, was transcribed and the transcript is contained in the files of the Department of Justice.

In no hearing which I personally conducted was there any evidence or indication whatever of coercion or duress. In no hearing which was ever reported to me by any of the above named hearing officers or by anyone else was there any such indication. To the best of my knowledge and belief there was no claim of duress, as that term has ordinary legal significance, in any of the more than 5,500 renunciation hearings conducted at Tule Lake. In about two hearings conducted by me and in a few others of which I was told, the applicant stated that he did not in

fact desire to renounce. In each such case the applicant was not given the final form to sign and the hearing was forthwith terminated.

Upon my return to Tule Lake early in January 1945, I at once observed that the tension among the persons confined in the center had greatly increased since the middle of December and that the situation [96] generally had deteriorated. The activities of the openly disloyal persons were more flagrant and the demand for quick renunciation had increased. Prior to my arrival, an announcement had been published in the center newspaper to the effect that applications for permission to renounce and correspondence with the Department concerning renunciation might be addressed to me at Tule Lake. By the time of my arrival, over 1,000 pieces of mail had been addressed to me registered mail, return receipt requested, at the center from persons confined therein, thus causing a temporary breakdown in the postal system. While some of these were merely requests for application forms or application forms themselves duly filled in, many of these thousand pieces of mail contained requests to be heard out of order and in advance of others. Substantially all of these letters were courteous in tone but insistent as to the writer's urgent desire to become a renunciant and to abandon United States citizenship. In addition to these registered letters, very many other pieces of mail were addressed to me at the Tule Lake Center at this time.

I learned that the disloyal young men's organization had increased its activities and had promulgated a rule that its members should shave their heads. Although all of its officers had been removed to an internment camp in New Mexico on December 27, 1944, by early January the entire hierarchy of officers had again been filled, which

involved fifty individuals. The hierarchy of officers of the older disloyal organization had also been replaced. In addition to requiring shaven heads, the young men's organization had now embroidered a Rising Sun on the breast of the white sweatshirt which constituted a part of the uniform. In conjunction with the Rising Sun, there were stenciled some Japanese characters in black ink which represented a patriotic slogan. The patriotic exercises were being conducted more regularly and, on the first Sunday after I returned to Tule Lake, the young men's organization, having learned in which part of the administration quarters I was living, arranged to hold its Sunday [97] ceremonies, complete with a corps of buglers, at that point of the fence nearest my room.

At this time I also learned that the older disloyal organization had for sometime been putting out a paper in Japanese having as its title a word which can be translated approximately as "fatherland." This paper, which was mimeographed at regular intervals, contained much material glorifying the Japanese Army in its war aims and asserting loyalty to the Emperor. One article referred to the war between the United States and Japan as a holy war.

At the time of my second return to Tule Lake, the young men's organization prepared and furnished me a list which purported to be its membership list. During the succeeding weeks substantially everyone whose name appeared on the list was questioned and substantially each person on the list admitted his membership and his adherence to the principles of the organization. Substantially every person on the list appeared before the hearing officers dressed in the sweatshirt already described having the Rising Sun stenciled on the breast. Each such person had his head

shaven and the hearing officers were informed, whenever the question was asked, that the shaven head was the symbol of the Japanese soldier. In a few cases it was established that there was a mistake in names and in a number of other cases it was stated that the member had resigned. In no case, however, of which I have knowledge did the renunciant assert that his name had been placed on this list because he had been coerced or forced in any manner to join the organization. On a number of occasions persons stated or wrote in indicating that they had resigned from the organization and the files of the Department of Justice contain at least five letters from the officers of the association informing the Department of Justice mission of deletions from the membership rolls due to resignations. In no case of resignation was it suggested in any manner that any harm was inflicted on the resigner. [98]

Since it was deemed important to minimize the influence of the disloyal organizations and to terminate military drilling in a species of uniform preparatory to service in the Japanese Army, it was at once determined that the entire second list of officers of both organizations should be removed and interned as soon as practicable. Accordingly, the hearing officers set about giving hearings to this second group and, pursuant to an approval of renunciation by the Attorney General and authorization of apprehension, the second group of officers was removed to Department of Justice internment camps on January 26, 1945. Thereafter, and with substantially no delay, a complete third slate of officers was elected and the Department of Justice was informed at this time that the organizations contemplated continuing to elect officers so long as the Department of Justice continued removing

them. Since the organizations had by now survived the removal of two complete sets of leaders, it became evident that they had broad support and were not the work of a few fanatics. It was, therefore, determined, after telephonic consultations conducted by me with my superiors in Washington, that the entire membership of the militant young men's organization should be removed and the hearing officers were, accordingly, directed to hear first the cases of persons on this list. About 650 members of the organizations were removed on February 11, 1945 after processing as described above, and about 125 more were moved on March 4, 1945. By this time all the leaders and all the members who were active members on the list furnished in January 1945 had been removed. In addition, several sets of the leaders of the older disloyal organization had been removed, as well as the writers for the "fatherland" magazine above described, the teacher of the Greater East Asia School, teachers at a number of other Japanese Language Schools who had been found to be active in pro-Japanese propaganda, and a number of Buddhist priests who had been active in propaganda. It was hoped that at this time when the leadership of the [99] pro-Japanese group had been removed that there would be a substantial withdrawal of applications for renunciation. This movement did not take place, however, and substantially everyone who applied for renunciation went through the process which continued for sometime after the last of the leadership group had been removed. It would be incorrect, however, to state that all of the members of the young men's group were removed since, as renunciation was only permitted for boys and men of the age of 18 or over, younger boys who remained took up when their older brothers were removed and blew the bugles and drilled for Japan. Similarly, since no women

were removed, a woman's organization was started which joined the boys in Sunday morning drilling.

The statute authorizes the Attorney General to disapprove renunciation only if it appears contrary to the interests of national defense. The Army had determined that it would not accept any men from the Tule Lake Center and the Selective Service System at the time of the hearings was making no effort to induct any males of Japanese descent from the center. It thus appeared that there was no problem of national defense in any of these cases and, indeed, in no case did it appear that the interests of national defense required disapproval and, therefore, there was no case in which the Attorney General could properly have disapproved renunciation on any ground providing that it was uncoerced and understood. The residents of the center, however, failed to understand this and believed that there was some discretion or option lodged in the hearing officers. For this reason they appeared most anxious to persuade the hearing officers of the necessity of permitting their renunciation and, to do this, they made extreme claims of loyalty to Japan. Because of this it frequently became impossible to conduct a frank and free examination of the renunciant's state of mind and became useless to ask many questions which would otherwise have been of interest. For example, it was observed that if the renunciant were asked his opinion of the Emperor he would usually, if not always, leap to his feet and stand at [100] rigid attention and then assert that he regarded the Emperor as the Living God. Similarly, substantially every renunciant who was asked stated that he believed that Japan would win the war and that he hoped for this result. Although this tendency of the answers to become stereotyped in an effort to persuade the

hearing officer of the active disloyalty of the applicant, the hearing officers in every case were able to ask enough questions to make sure that the applicant understood the nature of renunciation and that it was the applicant's desire not only to sign the application form but to persuade the officer that the applicant was actively disloyal to the United States and that his application should, accordingly, be approved.

On the occasion of my second trip I remained in Tule Lake for nearly three weeks. During this time I arranged the procedures and conducted some hearings myself. A great deal of my time, however, was spent in discussing with various officials of the War Relocation Authority and of the Army detachment there the reason for the very great rush of persons to renounce. Estimates as to the number of persons who would renounce had been made prior to the enactment of the statute by various officials ranging between 500 and 2,000. Even during my first trip to Tule Lake in December 1944, it was not expected by anyone that, of the 7,000 citizens over 18, over 5,000 would renounce. Yet this number of applications for renunciation flooded in at the time of my second trip. This caused concern both in Tule Lake and in Washington and I devoted considerable effort to endeavoring to understand the reasons for this development since it was hoped that in some way this flood might be stopped and some of those persons who were not in fact disloyal but merely disgruntled might be dissuaded from throwing away their citizenship. Accordingly, I talked at great length with Mr. Ray Best, the Director of the center, Mr. Louis M. Noyes, the War Relocation Attorney at the center, the Chief of the Internal Security Guard, to many of the guards [101] themselves, to the Colonel command-

ing the troops stationed immediately at the camp gate, to his security officers and to many other experienced persons at the center. I also talked to the head of the War Relocation Authority's regional office in San Francisco and, upon my return to Washington, I talked to Mr. Myer, the Director of the War Relocation Authority, and his subordinates. At Tule Lake I particularly talked also to Dr. Marvin Opler, an anthropologist who was employed by the War Relocation Authority as what was called a "community analyst", whose job was solely to gather social information concerning the community and to report on community trends. On this job he had a staff of persons of Japanese ancestry living in the community and reporting to him on developments. I also talked to ministers and social workers and doctors and to Miss Rosalie Hankey, an anthropologist employed by the Evacuation and Resettlement Study under the auspices of the University of California and who, not being a Government representative, was able to talk to the residents of the center and to meet less reserve and resentment. Both in Tule Lake and in Washington, in addition, I read many of the reports filed on Tule Lake from sometime prior to the commencement of the renunciation hearings up to and including that period.

Although the opinions of the various officials and others differed widely as to the social considerations leading to renunciation and as to the proper policies to pursue, no official at this time ever stated or suggested to me in any way that coercion, as that term has been understood in the law for centuries, was a factor of any significance. It was the universal opinion that the population of the Tule Lake Center, consisting as it did of 18,000

persons taken from their normal homes and occupations, and placed in a wired-in area of about six square miles of black volcanic ash, and living in uncomfortable black tar-paper barracks, under a pall of black smoke in winter and ash and dust in summer, with wholly inadequate occupation to keep them busy, and with substantially no effective control by the Government as to what activities [102] were carried on inside the fence, had become highly emotional and excited. It was universally agreed that the rush toward renunciation was illogical and unreasoned and that many of the young men who were now marching up and down between the barracks with the Japanese emblem stenciled on their sweatshirts had been, before the war, loyal American citizens and that the asserted loyalty to Japan was often a kind of hysteria. It was a commonplace witticism among the officials of the center at the time of these hearings that the population of the center was largely mad and that the center might properly be taken from the management of the War Relocation Authority and transferred to the Public Health Service to be run as a species of mental institution. All of the discussion and speculation as to the reason for the unforeseen volume of renunciation related to the reason for this hysterical public behavior and none of it related to coercion and it was never suggested contemporaneously in any way that it might be due to coercion.

It is true that there were extensive rumors of the use of force within the center. During the summer of 1944 one person of Japanese ancestry who had been prominent in assisting the administration was murdered and this murder was not solved. While it was believed by some that the motive for the murder was disapproval of dece-

dent's prominent pro-administration activities, Mr. Best informed me that the most probable explanation was that the man was murdered because of improper relations with another man's wife. In addition to this, there were a number of stories of beatings and of threats thereof. These, however, related to struggles for political leadership and did not relate to private behavior. Thus, there is no doubt but that, had strong leadership arisen contrary to the leadership of the young men's organization and opposed to renunciation, the struggle as to who should lead the young men might have led to the use of physical force. At no time while I was at Tule Lake, however, was it suggested to me by any one that physical force or its threat was being employed against persons who did not aspire to leadership but who [103] merely themselves did not desire to renounce. In this connection it may be recalled that about 1,500 persons eligible to renounce did not do so and that many persons openly resigned from the disloyal organizations and yet no record of physical violence in connection therewith came to the attention of the authorities. What is said here concerning my observations and conversations with persons familiar with the Tule Lake scene relates with equal force to the reports filed with the War Relocation Authority by officials at Tule Lake and reviewed by me for the Department of Justice. Not any of the contemporary reports which I have seen assert that coercion was a significant factor in renunciation.

At the end of January 1945 I left Charles M. Rothstein in charge of the Department of Justice mission at Tule Lake and returned to Washington and again reported in full to my superiors describing especially the mass hysteria prevailing among the residents and the fanatical expres-

sions of loyalty to Japan which followed it, as well as the great number of persons seeking to renounce. At this time some discussion was had as to possible measures to prevent renunciation at that time, such as the suspension of hearings, but it was the ultimate determination of the responsible officers of the Department that Congress had provided that persons who in time of war desire to renounce their citizenship may do so provided only that the Attorney General might disapprove if he found that the renunciation was contrary to the interests of national defense. It was decided that since no such consideration existed in the present cases the Department of Justice was without authority to proceed otherwise than to carry out the law and to permit renunciation by all persons who understood what they were doing and wished to do it. Although it was felt that there was a state of great excitement among the residents, nevertheless it was thought that that excitement was not of a character (such as insanity) which could be given legal effect. With respect to those cases previously discussed in which the hearing officer felt that the renunciant was in fact [104] Americanized and was acting solely out of resentment at evacuation or some similar motive and in which the hearing officer desired that a further review as to policy be conducted in Washington, a disagreement arose among the responsible officials and no decision was made at that time as to the disposition of the cases, and they were merely set aside. These cases were not acted on before Attorney General Biddle and Assistant Attorney General Wechsler left the Department and, in fact, had not been acted upon as of the date of my leaving the Department, June 3, 1946.

Following my departure from Tule Lake, Charles M. Rothstein continued to receive renunciations until the list

was completed on March 17, 1945. A number of renunciation applications came in thereafter from Tule Lake and Mr. Rothstein again went there in July 1945 and held additional hearings. Although additional persons deemed undesirable by the War Relocation Authority were interned at the request of that agency by the Department of Justice during June and July 1945, the Department of Justice had completed its removal of disloyal persons it considered troublemakers by March 4, 1945. Thereafter, there was substantially no move to withdraw or cancel renunciation until June 1945, in which month a number of applications came in. None of the first applications asserted that the renunciation had been made under coercion but appeared to assume that, since renunciation was a voluntary matter, its cancellation would likewise be. Form letters were written to such persons explaining that it was not within the power of the Attorney General to restore citizenship once lost through renunciation and that the renunciation itself was valid because it had been made in the absence of coercion and with a clear understanding of what was being done. Thereafter, the tenor of the letters seeking cancellation of renunciation changed and careful statements concerning coercion were made in many of them. In this connection it was noted that persons who at the time of their hearings could speak little or no English and who, according to the files of the Department of Justice, had substantially no American education, at [105] this time appeared as the purported authors of letters containing arguments previously advanced by members of the War Relocation Authority staff or by members of the families of that staff couched in English to be expected of educated persons.

Although 3,557 persons are plaintiffs in the instant suits or have otherwise now indicated a desire to withdraw their renunciation of citizenship, as of the sixth day of August, on which the atom bomb was dropped on Hiroshima, very few had written to the Department of Justice indicating a desire for withdrawal, and even the Japanese surrender did not start the great rush away from renunciation. Thereafter, however, counsel for the plaintiffs arrived at Tule Lake in person and was retained by some of the plaintiffs herein. This set off a chain of reactions said by competent observers to be closely parallel to the rush toward renunciation in December 1944 and January 1945. Groups were set up to encourage persons to join in the suits and much the same social rush to be listed as a plaintiff in the instant group of suits arose as previously had arisen to be listed as a renunciant.

As has been said, none of the contemporary statements made by responsible War Relocation Authority officials at Tule Lake indicated a belief that coercion was a significant factor in renunciation and none of the contemporary reports which I have seen indicates this. It came to be the opinion of some of the persons in the War Relocation Authority, however, in the spring and summer of 1946 that coercion was a factor although it is not clear that these persons also understood what the word "coercion" means in contemplation of law. The development of this opinion held by officials not responsible for the conduct of the hearings and who, with one exception, did not attend any hearings may be viewed in the light of the fact that at the time of the hearings and thereafter until the cessation of hostilities it was believed by all responsible officials of the Department of Justice that all renunciants would have

to be detained for the duration of the war and that they would thereafter [106] be repatriated to Japan. This belief was communicated to Dillon S. Myer early in the program and he and his subordinates strongly disapproved of it, feeling that it would be possible and desirable to relocate renunciants in the United States at an early date. This and other differences of view between the War Relocation Authority and the Department of Justice gave rise to a disapproval by the War Relocation Authority of the renunciation program generally and, when it became apparent that the only way in which renunciation could be set aside was by proof of coercion, it came to be thought by some members of the War Relocation Authority's staff that the renunciations had been coerced. At the time that this view was formulated, a parallel view was expressed in parallel phraseology by persons of Japanese ancestry desiring to set aside renunciation.

A letter to a private citizen signed by Mr. Abe Fortas, then Under Secretary of the Interior, has been annexed to a pleading in this case* and has been stricken as improperly pleaded. This letter, of which Mr. Fortas has assured affiant he has no present recollection or knowledge, contains a statement that the very high percentage of renunciations among those eligible to renounce was brought about by the disloyal organizations, hereinbefore described. This statement contains a major ambiguity. It might mean either that the organizations forced or coerced the renunciations or that they crystallized a spirit of loyalty to

*Note: This reference is to the consolidated Tule Lake case, pending in the Northern District of California (Tadayasu Abo, et al. v. Clark, et al., Cons. No. 25294-S), in which this affidavit has been filed and for use in which it was originally prepared.

Japan and disloyalty to this country which led to renunciation. If the letter is given the first meaning, then it is at variance with all of the contemporaneous statements made by the War Relocation Authority's own staff on the scene and all of the contemporaneous reports of that staff insofar as affiant is familiar with them. It is also at variance with the experience of the hearing officers who in fact conducted the hearings and which is recorded in more than 5,000 stenographic transcripts of hearings. If, however, the statement is given the second meaning, then the letter is not very far from correct since the organizations [107] unquestionably had an important place in whipping up sentiment in favor of Japan and in favor of renunciation. The crystallization of sentiment in favor of an ideal, however, is a far cry from legal coercion to do a specified act. By way of illustration, it may be said that the churches of the various denominations throughout the nation are unquestionably a major source of devotion to religion, yet no one would suppose that ministers and priests coerced the members of the congregations into church attendance. Based on many extensive observations of conditions at Tule Lake, it is my belief that the organizations played an important role in providing leadership for Japanese patriotic sentiment. It is my belief that this is substantially the only relevant function performed by the organizations. Their members may have used force to maintain control of their own organizations. They did not use force to augment their membership. In concluding this section of the affidavit, it may be pointed out that Mr. Fortas has not only never conducted or attended a renunciation hearing, but, insofar as the affiant is aware, has never been within the gates of the Tule Lake Center.

It is asserted in the amended complaint that the Commanding General, Western Defense Command, affirmatively found as a fact that each renunciant at Tule Lake was loyal to the United States and presented no threat to the peace and security of the United States. The basis of this argument presumably is that on December 19, 1944 he lifted the general ban on all persons of Japanese ancestry within the Pacific Coast area and excluded only specific persons by individual orders, that he did not serve individual exclusion orders upon renunciants and that, therefore, he found them safe to permit back upon the Coast. It is within my personal knowledge that this argument is fallacious and that no such finding was made by the Commanding General. At the time that the Commanding General determined to reopen the Pacific Coast area to all except individually-named persons of Japanese ancestry, he determined to prepare a list of individuals as to whom there was information [108] sufficient to form a basis for the judgment that that individual should not be permitted to return. This was to be done by means of transferring all of the security information which had been secured from various Government agencies and filed in the headquarters of the Western Defense Command at the Presidio in San Francisco into punched Hollerith cards and to determine in advance what security information was sufficient to warrant the preliminary classification of individuals as excludable. The list was then to be prepared mechanically. Persons on such a list were then to be given hearings by Boards of Officers and recommendations were then to be made to the Commanding General and the decision was to be made by the General personally. At this time a request was received by me for the Department of Justice from officers of the Commanding General's staff for lists of all persons who had

applied for permission to renounce their citizenship. It was contemplated that this information would be placed on the cards and that each individual who had made such a request would automatically be placed on the exclusion list. I did not furnish the information at that time but subsequently after discussion with Attorney General Biddle and Assistant Attorney General Wechsler, I called upon Brigadier General Wilbur, Chief of Staff, Western Defense Command, and assured him that the Department of Justice would cause the internment of every person of Japanese ancestry who renounced his citizenship for the duration of hostilities and that, accordingly, no military problem existed since no renunciant would be at liberty within the United States. For this reason, the General agreed to withdraw the request for names. This inter-departmental agreement was on several occasions renewed by my superiors and it was at all times explicitly understood, both in the Western Defense Command and in the Department of Justice, that the sole reason why exclusion orders were not issued to the renunciants was that an exclusion order was not necessary since they would be excluded by the Department of Justice by the fact of internment. [109]

Not only did the General not consider applicants for renunciation eligible for return to the Coast during war-time but also he contemplated preparing a list of all such applicants and some citizens in addition and recommending to the Attorney General that persons whose names appeared thereon be detained during hostilities. It was only as a result of the agreement to detain all renunciants that the General was persuaded to refrain from recommending the detention of a larger list of persons including many citizens.

As has been stated, affiant is of the opinion that there were many motives which lead to renunciation. The most obvious one was a genuine disaffection with the United States and loyalty to Japan. As has been said, there were 2,000 or more Kibei who had been brought up entirely in Japan and who had no experience with American life whatever. Particularly in view of the sentiment of the population of the coastal states regarding persons of Japanese ancestry which prevailed during hostilities, it is not surprising that many Kibei felt that they had no chance for life in the United States and that they might as well return to the country to which they were accustomed. Feeling that, it is not surprising that sentiments of loyalty to the country to which they were bound, both by ancestral ties and by cultural and educational ties, sprang up. In addition, it may be remembered that over 100,000 persons were evacuated and that generally those who were most loyal to Japan were distilled out into one group. The loyalty questionnaire of 1943, the segregation hearings and segregation itself had had some tendency to separate out from the general group those who were disloyal. This separating process had continued at Tule Lake and it would not be surprising if out of the 100,000 persons of Japanese ancestry evacuated, some 2,000 or more, including Kibei, genuinely felt loyal to Japan. Granted the existence of a nucleus of Japanese loyalty, it is furthermore not surprising that agitators and leaders acting in what was for all practical purposes a concentration camp managed to instill and fan [110] sentiments of Japanese loyalty in young men who had been brought up in American schools to believe that all men, including themselves, were created equal, only to learn that this principle of the Declaration of Independence did not apply to them.

Although feelings of loyalty to Japan undoubtedly were important, it is affiant's opinion that by far the most significant cause of renunciation viewed from the point of view of numbers was the announcement to which reference has already been made that the center was to be closed within one year. It should be recalled that the War Relocation Authority gave printed statements to all persons arriving at its center in 1942 that the centers were to be available as shelters to their residents throughout hostilities. In 1943 the War Relocation Authority went further in relation to Tule Lake and informed segregants that they could find a home there until they could be returned to Japan. The attitude of many of the Tule Lake residents prior to the closing announcement was that they had been asked by the Government to decide whether they wished to be relocated in the United States or to be sent back to Japan when practicable and that they had decided in favor of a future in Japan. Their attitude further was that, having made that decision and having accepted the stigma of disloyalty, they had rendered themselves incapable of returning, particularly during wartime, to life in the United States outside of a War Relocation Authority center. Although prior to the lifting of the general ban the residents of Tule Lake were in fact detained there by barbed wire and sentries and although the lifting of the ban meant that all those not specifically named for detention were free to go out, there was no demonstration of a sense of joy at this sudden freedom but, on the contrary, there were wide-spread expressions of dismay and anger and very few did leave for some months. When this announcement was followed immediately by a further announcement that the center was to close within a year the utmost dismay was created since it appeared that those

persons would be forced out into the general [111] community of the West Coast during hostilities branded as disloyal and with no place whatever to go. It should be noted that at the time of the announcement the war with Japan was still in process, and there was no clear indication that it would be over within a year. It is the opinion of affiant that it was this announcement made on or about December 20 which led to the great rush to apply for renunciation which reached the mail rooms of the Department of Justice on December 26th.

It is relevant to point out that the notice that the War Relocation Authority centers were to close in a year caused concern not only at Tule Lake but elsewhere. Distress over the center closing program was created in the other centers and in February 1945 delegates from all the centers met in Salt Lake City, Utah and adopted resolutions calling for the rescission of the closing order. Strong pressure from residents of the centers to induce the Government to keep the other centers open continued until the surrender of Japan.

Upon my second arrival at Tule Lake in January, I at once observed that the threatened closing of the Tule Lake Center was having the effect described and I, therefore, conferred with Mr. Best, the Director of the center, who agreed and both of us reported to our superiors recommending a withdrawal of the announcement. The War Relocation Authority, however, did not do this but instead announced that the center would not be closed within one year, that residents could remain at the Tule Lake Center or some similar center until January 1, 1946 and that plans for a segregation center beyond that date had not been completely worked out. At this time a rumor became wide-spread in the center that the Department

of Justice would operate the segregation center, if any, which was to be kept open after January 1, 1946. Since the Department of Justice was thought to have authority only to operate internment camps, it followed that, in order to remain in a camp, it would be necessary for one to become subject to internment as an alien enemy. It is affiant's opinion that about half of all renunciations are [112] attributable to this factor alone.

A related factor is that of the draft. Whatever the loyalty of the citizen children may have been, it cannot be doubted that many of the alien parents who in 1943 determined to take their children back to Japan at this time felt loyal to that country. Understandably, they were most concerned over the possibility that their sons might be drafted into the American Army, particularly in view of the very heavy casualties encountered by the widely publicized Japanese-American combat organizations in Italy. The announcement that the center might be closed and the lifting of the general ban on persons of Japanese ancestry gave rise to a rumor that men of draft age were once more to become subject to induction. It is affiant's belief that a very considerable number of renunciations came about either because the renunciant himself feared he would be drafted if he did not renounce or because his parents persuaded him to renounce because they feared that result.

Another feature of great importance is family loyalty. As has been said, a rumor was in circulation that all aliens at that center were to be repatriated. There was substance to this rumor to the extent that most of the aliens had gone to or remained at this center as a result of requests for repatriation. It was believed by many officials

of the Department of Justice and of the War Relocation Authority that repatriation of this group of aliens would be ordered after the war. In addition, an announcement by the Japanese Government looking to additional exchanges during the war was published in the middle of January 1945 in the newspapers which freely circulated in the center. Aliens who expected to be repatriated, therefore, were concerned over the possibility that their American citizen children might either be drafted or forced to relocate in the United States and that they might forever be separated. The idea was circulated that, since aliens were to be repatriated, they would be interned by the Department of Justice and permitted to stay in some camp, whereas citizen children would not be interned, which again [113] would work a separation. On the other hand, renunciation would put all members of the family in the same group and thereby avoid this danger. In this connection it may be said that many authorities believe that family ties and filial obedience are unusually strong in Japanese culture. Those citizen children who had become sufficiently Americanized not to feel this tie had either caused their parents not to accept Tule Lake in the first place or had left their parents and had relocated. By and large, it was those children who were more dependent on their parents who had gone to Tule Lake and it is not surprising that to some extent it was they who accepted parental instructions to renounce in order to preserve the family unit. Pressure for renunciation was particularly strong in the case of eldest sons who, in Japanese culture, are responsible for caring for the parents and maintaining the family. If parents believed that they would be repatriated, this would constitute an additional reason for the son's renouncing his citizenship.

It is also affiant's opinion that in the case of any citizens who expected to go to Japan to live permanently renunciation was thought desirable in order to have a record of pro-Japanese loyalty and activity with which to establish oneself in Japan.

A further factor which increased the fear of forcible expulsion from the camp and also increased determination to go to Japan was the exaggeration of reports of atrocities committed against persons of Japanese ancestry returning to their pre-war West Coast homes. In addition to those incidents which did in fact occur, there were numerous rumors, circulating in the camp, of families burned alive in their houses, and the like.

Another factor was a sense of pride in consistency and in determination to adhere to a decision earlier made. Although it is generally agreed that the loyalty questionnaire of February 1943 was submitted to and filled out by the occupants of the centers in conditions of great confusion, nevertheless affiant believes that some who answered [114] in the negative felt that having publicly adopted that position they would lose prestige by failing to adhere later to a pro-Japanese position.

Lastly, it is affiant's opinion that an entirely irrational mass hysteria activated the people to a very great extent. There were in the center 18,000 persons with wholly inadequate work or occupation, living under not cruel but certainly unpleasant circumstances. The center had no dividing fences or walls and the people were free to do substantially whatever they liked within the outer fence, which had a perimeter of over five miles. While there were Caucasian staff members in the center during working hours, there were substantially no staff members inside the fence during the evening and at night and during Sunday except a few guards patrolling in automo-

biles. Although there was some entertainment, there was not much. These people had been in detention for 2½ years and inside the Tule Lake fence for more than a year. Although they had access to newspapers and magazines, to a very great extent these were disbelieved as American propaganda. Rumors of the most foolish or fantastic nature circulated widely and were given wide credence. For example, during these hearings it was generally believed that General MacArthur was being permitted to advance into the Philippines so as to entrap his Army and most of the fleet. When this General broadcast from Tokyo following the surrender, the fact that he was in Tokyo was cited as evidence not that Japan had surrendered but that the General had been taken prisoner. When in October 1945 the Military Police were withdrawn from the center and the duty of guarding it was transferred to the Border Patrol of the U. S. Immigration and Naturalization Service, the rumor was that at noon on that day the American flag was to be run down on the flagpole and the Japanese Army, which was marching southward from the Columbia River, would march in and hoist the Rising Sun. Given all these social conditions and a group of 18,000 substantially idle persons, most of whom had suffered racial discrimination for years and who had just been the victims of what must [115] have appeared to them as the most outrageous incident of racial discrimination in American history, it was foreseeable that a state of very great emotional excitability would be created. Given further a nucleus of genuinely pro-Japanese leaders, it seems, at least in the light of hindsight, also foreseeable that this group could be whipped up into a sort of hysterical frenzy of Japanese patriotism. In fact, it was to be expected that boys from 18 to 20 having little or nothing to do would adhere with

great fervor to some cause and, since the cause perforce was Japanese, it was expectable that they would shave their heads to emulate Japanese soldiers and wear a uniform with the Rising Sun on it and engage in drilling and Japanese ceremonial exercises. Indeed, these Japanese patriotic activities carried on by these persons behind barbed wire fences may be likened to a very high degree to the hysterical "yammering" which sometimes occurs in ill-run prisons.

In view of the fact that, of the more than 5,000 persons who received the careful hearings above described, not one asserted that he was being coerced into renunciation, in view of the fact that no incident relating to coercion came to the attention of the Department of Justice mission which was explicitly instructed to be on the alert to observe any such incident, and in view of the fact that no Government official in any department asserted that coercion was a significant factor until months after the fact and, finally, in view of the fact that no important volume of withdrawal of renunciations took place until the outcome of the war was a moral certainty, affiant is of the opinion that substantially none of the renunciations was brought about due to coercion in the sense that the renunciant did not wish to renounce his citizenship but nevertheless signed the form because he was afraid that if he did not physical injury would be inflicted upon him or upon his family. Affiant is further of the opinion that substantially no renunciation took place because of any kind of threat or intimidation other than parental instruction. [116]

It is patent, however, that all renunciants at Tule Lake were confined in a concentration camp at the time they renounced. Realistically, either they or their parents had chosen to go there, but nevertheless, at the time of that

choice, they had been in another concentration camp. The only choice was whether to remain in a relocation center with the hope of relocation in a part of the country other than that where their home was or to proceed to the Tule Lake Center for segregation during the war. It is also true that no court has ever passed upon the constitutionality of detention at Tule Lake. It is also patent that there was existing at Tule Lake at the time described a very high degree of excitement whipped up by organizations admittedly extremely pro-Japanese. It is also true, as has been stated, that most of the renunciations took place at the time when the renunciants and their families were in extreme fear of being forced out of the center into a hostile community and when they believed that the only way of making sure of protective detention during the war was to make themselves eligible for Department of Justice internment. If these factors and this hysteria render the act of renunciation by persons detained under these circumstances void, then the renunciations are void. If the court is now to hold that the totality of the circumstances described in this affidavit constitutes coercion, then these renunciations were coerced. If, however, the court rules that if a man or woman, of whatever race and however badly treated by the community, refuses to assert his loyalty in 1943, and, in practical effect, voluntarily accepts segregation and thereafter applies in writing for permission to renounce his citizenship and still thereafter files a second form asking for permission to renounce and still thereafter appears before a hearing officer and asserts loyalty to Japan and disloyalty to the United States in time of war and, in the absence of any fear of immediate injury to himself or to his family, has performed a formal act of renunciation within the scope of the statute which was passed by [117] Congress for the precise purpose of

permitting the very renunciations here in question is to be held accountable for his actions, then these instant renunciations are not void and were not coerced. It may be said that the hardships inflicted upon these persons were very great and that the hysteria and mental confusion was likewise great. It must also be considered, however, that the obligation and significance of citizenship is great and when, in time of war, one voluntarily, with full understanding, casts that citizenship aside and asserts loyalty to the enemy, that constitutes a legal act which should not lightly be set aside. In affiant's opinion, it is a legal act which cannot be set aside by recourse to any existing legal concept. Such renunciation would not be set aside as a result of a determination that legal coercion existed but only as an expression of the regret of the American people over the original act of evacuation and detention. If the renunciations are ultimately set aside, in affiant's opinion, that ultimate decision will only be justified as a determination that the persons of Japanese ancestry resident on the Pacific Coast were so goaded that some of them took the foolish step of renunciation and that, because the moral blame is ultimately elsewhere, these persons shall not suffer the legal consequences of their own acts. Whether this step should or will be taken is not within the purview of this affidavit. It is, however, affiant's belief that this analysis should be clearly understood.

/s/ JOHN L. BURLING

Subscribed and sworn to before me this 13th day of May, 1947.

(Seal)

MARY R. McLEAN.

Notary Public

My commission expires Oct. 14, 1951.

November 8, 1946. [118]

[Title of District Court and Cause]

AFFIDAVIT OF JOSEPH J. SHEVLIN

District of Columbia—ss.

Joseph J. Shevlin, being duly sworn, deposes and says:

I am a member of the Bars of the State of New York and the District of Columbia and am a Principal Attorney in the Department of Justice. I was appointed Hearing Officer by the Attorney General and authorized to conduct hearings and make recommendations in connection with the renunciation program pursuant to the provisions of Section 401(i) of the Nationality Act of 1940. All the information contained herein is either on personal knowledge or from examination of the file of Plaintiffs.

In December, 1944, Plaintiff Sumi made application for renunciation of United States nationality. (Copy of her letter of application is annexed hereto and marked Exhibit A.)

Subsequently, an official form was sent to Plaintiff Sumi which was executed and returned by her on January 20, 1945. (Copy of this form is annexed hereto and marked Exhibit B.)

On February 1, 1945, I gave Plaintiff Sumi a hearing on her application. The only persons present were the stenographer, the interpreter, the said plaintiff and I. At no time did it appear that the said plaintiff was acting in any way other than by exercise of her own free will. I made an attempt to have said plaintiff reconsider her action but was unsuccessful. (See copy of transcript of hearing attached hereto, marked Exhibit C.) [119]

Having satisfied myself that such renunciation was the independent act of said plaintiff, I recommended approval thereof as not being contrary to the interests of national

defense, which recommendation was approved by the Attorney General on May 3, 1945. (A copy of said recommendation and approval is annexed hereto and marked Exhibit D.)

On December 3, 1945, at Tule Lake, Plaintiff Sumi wrote a letter to the Department of Justice, petitioning for non-repatriation, alleging that she had applied for repatriation by mistake. (A copy of this letter is annexed hereto as Exhibit E.)

On January 23, 1946, Plaintiff Sumi was given a mitigation hearing at Tule Lake. At the hearing she stated that she had renounced her citizenship to go back to Japan with her husband. (A copy of the hearing officer's recommendation is attached hereto and marked Exhibit F.)

As a result of said hearing, the hearing officer recommended that Plaintiff Sumi be released, which was done by order of the Attorney General dated February 19, 1946. (A copy of the order of the Attorney General is annexed hereto and marked Exhibit G.)

On February 12, 1945, Plaintiff Murakami made application for renunciation of United States nationality. (A copy of her letter of application is annexed hereto and marked Exhibit H.)

Subsequently, an official form was sent to Plaintiff Murakami, which was executed and returned by her on March 1, 1945. (A copy of this form is annexed hereto and marked Exhibit I.)

On March 14, 1945, I gave Plaintiff Murakami a hearing on her application. The only persons present were the stenographer, the said Plaintiff and I. At no time did it appear that the said Plaintiff was acting in any way other than by exercise of her own free will. I made an

attempt to have the said Plaintiff reconsider her action but was unsuccessful. (See copy of transcript of hearing attached hereto, marked Exhibit J.) [120]

Having satisfied myself that such renunciation was the independent act of said Plaintiff, I recommended approval thereof as not being contrary to the interests of national defense, which recommendation was approved by the Attorney General on May 3, 1945. (A copy of said recommendation and approval is attached hereto and marked Exhibit K.)

On August 30, 1945, at Tule Lake, Plaintiff Murakami wrote a letter to the Department of Justice, attempting to withdraw her renunciation, and alleging that she had renounced in fear of being separated from her husband. (A copy of this letter is annexed hereto as Exhibit L.)

On January 25, 1946, Plaintiff Murakami was given a mitigation hearing at Tule Lake. At the hearing she stated that she had renounced her citizenship because she was afraid of being separated from her husband. (A copy of the hearing officer's recommendation is annexed hereto and marked Exhibit M.)

As a result of said hearing, the hearing officer recommended that Plaintiff Murakami be released, which was done by order of the Attorney General dated February 21, 1946. (A copy of the order of the Attorney General is annexed hereto as Exhibit N.)

JOSEPH J. SHEVLIN

Subscribed and sworn to before me this 20th day of March, 1947.

(Seal)

MARY R. McLEAN

Notary Public

My Commission Expires Oct. 14, 1951. [121]

EXHIBIT A

MRS. TSUTAKO SUMI
7502-A.B.

Tule Lake Project
Newell, California

Edward J. Ennis,
Director, Dept. of Justice,
Alien Enemy Control Unit,
Washington, D. C.

Honorable Edward J. Ennis:

Please permit me to write to you concerning the renunciation of citizenship.

According to the newspaper, the renunciation bill has been passed by the congress and signed by the President. I have anxiously waited for this bill to become effective. May I ask if this bill of renunciation is now in effect?

And if it is so, please send me one copy of this application. I shall be very grateful if you send the forms as soon as possible.

Thanking you in advance for your kind attention to this matter, I remain.

Sincerely yours,

/s/ Tsutako Sumi
(Department of Justice)
(Received Dec. 29, 1944 AM)
(Alien Enemy Unit) [122]

4. I have resided in the following countries other than United States since birth or naturalization (give approximate dates). If none, so state. I went to Japan on March 16, 1916. I stayed in Japan 15 years, and I came back to U.S.A. on March 28, 1931,
5. I last entered the United States at (give name of port and approximate date) San Pedro, Port California on March 28, 1931.
6. I have the following close relatives (including spouse, parents, children, brothers and sisters)

Name	Relationship	Address	Citizenship
Saichi Sumi	Husband	7502-A.B.	None
Yoichi Sumi	1st son	"	Yes
Senichi Sumi	2nd son	"	Yes
Takako Sumi	1st daughter	"	Yes
Giro Murakami	Brother	7511-B	Yes

7. My education has been as follows:

School	Location	Date	Type of Studies Pursued
Amariko			
Mura Grammar	Japan	April 1, 1921,	Ordinary Course, B1
Graduate			
Amariko Mura	Japan	March 21, 1929,	Ordinary Course A8
None	U.S.A.		None [124]

8. I have had the following military service: (If no service or training, state "none".)

Country	Branch of Service	Rank	Year
None	None	None	

9. My United States Selective Service classification is as follows: None.
10. I hereby declare that the information given above is true and correct to the best of my knowledge and belief. I fully understand that if permitted to renounce my United States nationality I will divest myself of all rights and privileges thereunto pertaining.

Signature /s/ Tsutako Sumi

Date Jan. 20, 1945 [125]

EXHIBIT C

HEARING ON RENUNCIATION OF CITIZENSHIP

Applicant:	Tsutako Sumi
Hearing Officer:	Joseph J. Shevlin
Stenographer:	Dorothy Tucker
Date:	February 1, 1945
Case Number:	2006
Interpreter:	Eugenia Cochran

By Hearing Officer to Applicant Through Interpreter:

Q. What is your name?

A. Tsutako Sumi.

Q. Where and when were you born?

A. Los Angeles, California, on October 13, 1914.

Q. Where did you last reside before you were evacuated?

A. West Los Angeles, California.

Q. Is this your application? (Shown Application for Permission to Renounce U. S. Nationality.)

A. Yes.

Q. Why do you want to renounce your citizenship?

A. My father is in Japan and is old and I have to go back.

Q. Is that the only reason?

A. I am going back with my husband.

Q. Is that the only reason you are renouncing your citizenship, because your husband is going back?

A. I was in Japan a long time so I want to go back.

Q. When were you in Japan?

A. From the time I was three until I was eighteen.

Q. Were you graduated from grammar school in Japan?

A. Yes.

Q. And you graduated from high school?

A. No.

Q. You have had no schooling at all in this country?

A. About two years to a special class.

Q. To study English?

A. Yes.

Q. Your husband and three children are in this camp?

A. Yes.

Q. And your brother?

A. Yes.

Q. Is your brother renouncing his citizenship too?

A. Yes. [126]

Q. Do you have any brothers or sisters in Japan?

A. No, only my father.

Q. Do you understand that if you give up your citizenship you can never get it back?

A. Yes.

Q. If you do that and go back to Japan you can never come back to this country?

A. I know. My father is old and can't work so I just have to go back.

Q. You can still go back without giving up your citizenship.

A. I don't care, I want to go back anyway.

(Interpreter reads and explains Renunciation of U. S. Nationality form to Applicant.)

(Applicant signs Renunciation of U. S. Nationality form.) [127]

EXHIBIT D

Form Approved

Budget Bureau No. 43-R234.1

RENUNCIATION OF UNITED STATES NATIONALITY

To the Attorney General

Department of Justice

Washington 25, D. C.

I, Tsutako Sumi, was born at Los Angeles, Los
(First Name) (Middle Name) (Last Name) (City) (County)
Angeles, California, on Oct. 13, 1914.
(or Province) (State or Country) (Date)

My permanent residence is (if present residence not
permanent, state last permanent residence) W. Los An-
geles, Cal.
(State) (Street) (City)

I am a national of the United States by virtue of
birth—~~naturalization~~.
(strike out word not applicable)

I hereby formally renounce my United States nationality and all of its rights and privileges and abjure and renounce all allegiance to the United States of America in accordance with Section 401(i) of the Nationality Act of 1940 as amended.

I request the Attorney General's approval of this renunciation of nationality.

/s/ Tsutako Sumi
(Signature)

(Notices
Distributed
on
10/2/45 M.L.)

* * *

The above formal written renunciation of nationality was made and signed in my presence and before me, a Hearing Officer designated by the Attorney General pursuant to his regulations of October 6, 1944 (8 C.F.R. 316).

I recommend: Approval

Feb. 1, 1945

(Date)

Tule Lake, Cal.

(Place)

/s/ Joseph J. Shevlin
Hearing Officer

* * *

Approved as not contrary to the interests of national defense.

Washington, D. C. May 3, 1945

/s/ Francis Biddle
Attorney General [128]

EXHIBIT E

Department of Justice
Washington, D. C.

Sumi, Tsutako
7502-AB
Tule Lake,
California

December 3, 1945

Dear Sir:

I, Sumi Tsutako, (Family No.) 1293 and residing
Last Name
at 7502-AB Tule Lake, Calif. am a renouncee and applied
for an application for repatriation by mistake.

My desire is to remain in this country with my children
who are all American citizens.

At that time, I immediately notified the Philadelphia
Office of Japanese Interest to have my application changed
to Application for non Repatriation.

As I had *no* notified you about this matter, I am writ-
ing this letter at this time to have my case recorded at
your office.

Very truly yours,

/s/ Tsutako Sumi

(Department of Justice)
(Received Dec 10 1945 AM)
(Alien Enemy Unit) [129]

EXHIBIT F
REPORT AND RECOMMENDATION OF
HEARING OFFICER

D. J. File No. 146-54-2936

Name: Tsutako Sumi

Place of Birth: Los Angeles, Cal

Date of Birth: Oct 13, 1914

Last address before evacuation: W. Los Angeles, Cal.

Marital Status: Married

Children: 3

Names, citizenship and addresses of immediate relatives (include parents, spouse, children, brothers, and sisters. Indicate whether Japanese or United States national or renunciant.)

Jap. Cit. Husband	Saichi Sumi	2337 S. Pontius, W. Los Angeles, Cal.
U.S.C. Son	Yoichi " Age 10	Tule Lake
" "	Senichi " 8	" "
U.S.C. Dau.	Takako " 2½	" "

Dependency of any of these on subject or dependency of subject on any of them. Give reasons therefor.
Dependent on husband

List names, etc. of any members of immediate family presently serving in or who have been honorably discharged from the armed forces of the United States.
None

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Reasons for renunciation of United States nationality:
To go back to Japan with husband

Give any reasons peculiar to this individual case indicating special hardship to be created by removal. Explain in detail. 3 U.S.C. children

If it should be determined that members or a member of your immediate family should be removed to Japan,

do you wish to accompany them or remain in the United States? Go with husband

Remarks or observations by Hearing Officer:

2 a 1

(Continue on additional page if necessary)

On the answers to the foregoing questions and upon the further oral examination of the subject listed below, it is recommended that said subject (not) be removed from the United States.

/s/ C. H. Pennington

Hearing Officer

/s/ Marcus T. Neely

/s/ Howard L. Field

Dated, Tule Lake, California, Jan. 23, 1946.

Page 2—Case No. 2578 [131]

EXHIBIT G

In the Matter of
TSUTAKO SUMI
Alien Enemy

D. J. File No.
146-54-2936
b. 10/13/14

ORDER

The above-named alien enemy having been interned by order dated August 31, 1945; and it appearing from a reconsideration of all the evidence bearing upon this matter that said alien enemy should be released; Now, Therefore,

It Is Ordered that said order dated August 31, 1945, be, and the same hereby is vacated and set aside: and it is

Further Ordered that said alien enemy be released.

/s/ Tom C. Clark

Attorney General

Dated, Feb 19 1946 [132]

EXHIBIT H

7512-I

Tule Lake Center

Newell, California

February 12, 1945

Edward J. Ennis, Director
Department of Justice
Alien Enemy Control Unit
Washington, D. C.

Honorable Sir:

Kindly send me one set of application form "For Permission To Renounce United States Nationality."

Your kind attention on this matter will be greatly appreciated.

Yours truly,

/s/ Mae Murakami

M. MURAKAMI

(Department of Justice)

(Received Feb 20 1945)

(Alien Enemy Unit) [133]

EXHIBIT I

Form Approved

Budget Bureau No. 43-R233

APPLICATION FOR PERMISSION TO RE-
NOUNCE UNITED STATES NATIONALITY

To the Attorney General

Department of Justice

Washington 25, D. C.

I, Mae Miye Murakami, hereby state that I am a United States citizen and desire to renounce my United States nationality pursuant to Section 401(i) of the Nationality Act of October 14, 1940 as amended by Public Law 405, 78th Congress, Second Session, and pursuant to the regulations promulgated by the Attorney General on October 6, 1944, 9 F.R. 12241, and hereby request the approval of the Attorney General of my renunciation of nationality as being not contrary to the interests of national defense. I further make the following statements:

1. I was born at Mountain View, Santa Clara,
(Town or City) (Province or County)
California, on Nov. 18, 1917;
(State or Country) (Date)
 2. I reside at 7512-I, Newell, California;
(Street or P. O. Address) (City) (State)
 3. I am a national of the United States by virtue of
Birth in the United States.
- -----

(If a national by birth in the United States, so state; if naturalized, give name and place of the court in the United States before which naturalization was granted and the date of such naturalization.) An applicant should submit with this application any passport or certificate of citizenship he may have in his possession.

4. I have resided in the following countries other than United States since birth or naturalization (give approximate dates). If none, so state. None
5. I last entered the United States at (give name of port and approximate date) None
6. I have the following close relatives (including spouse, parents, children, brothers and sisters)

Name	Relationship	Address	Citizenship
Yasuo Murakami	Husband	7512-I	Japan
Koichi Murakami	Son	7512-I	U.S.
Maketo Murakami	Son	7512-I	U.S.
Tsuru Yoshinaga	Mother	24-10-A Ht. Mt. Wyoming	Japan
Suyeki Yoshinaga	Brother	24-9-A Ht. Mt. Wyoming	U.S.

7. My education has been as follows:

School	Location	Date	Type of Studies Pursued
Menlo Park Central School	Menlo Park	1924-1932	Elementary

[135]

8. I have had the following military service: (If no service or training, state "none".)

Country	Branch of Service	Rank	Year
None			

9. My United States Selective Service classification is as follows:
10. I hereby declare that the information given above is true and correct to the best of my knowledge and belief. I fully understand that if permitted to renounce my United States nationality I will divest myself of all rights and privileges thereunto pertaining.

Signature /s/ Mae Miye Murakami

Date March 1, 1945 [136]

EXHIBIT J

HEARING ON RENUNCIATION OF
CITIZENSHIP.

Applicant: Mae Miye Murakami

Hearing Officer: Jos. J. Shevlin

Interpreter:

Stenographer: Antonia H. Sherrell

Case: #5367

Date: March 14, 1945

Q. When and where were you born?

A. Mt. View, California, November 18, 1917.

Q. Where did you last reside before you were evacuated?

A. Santa Monica, California, 1948 Ninth Street.

Q. Is this your application?

A. Yes.

Q. Why do you want to renounce your citizenship?

A. Because I want to go back to Japan, and I won't need it when I am there.

Q. You have never been in Japan, have you?

A. No.

Q. Did you go to Japanese language school?

A. Yes.

Q. How long?

A. About the seventh grade.

Q. Can you speak Japanese well?

A. Enough to get along.

Q. Can you read it and write it?

A. Not very well.

Q. How far did you go in American schools?

A. Eighth grade.

Q. Your husband is issei?

A. Yes.

Q. Has he petitioned for repatriation?

A. Yes.

Q. Your father is not living, is he?

A. No.

Q. Your mother is at Hart Mountain?

A. Yes.

Q. Your brother is too?

A. Yes.

Q. Is your mother going to stay in this country?

A. Yes. [137]

Q. Of course, your brother will too?

A. Yes.

Q. Why don't you stay?

A. My husband is going back. He has a mother there. I go where he goes.

Q. Is that the only reason?

A. Yes.

Q. You can go to Japan without renouncing your citizenship?

A. That way it is better.

Q. It isn't. There is absolutely no connection between the two.

A. We don't want it when we go there.

Q. Suppose you want to come back?

A. We will just have to stay there, I guess.

Q. You have a couple of boys born here that might want to come here some day?

A. They will get used to it. My mother wants to go back.

Q. How long has your mother been here?

A. Thirty-four or thirty-five years.

Q. Did she ever go back?

A. She can't afford it.

Q. Are you loyal to Japan?

A. I think so.

Q. You understand if you give up your citizenship, you can't get it back, and if you do that and go to Japan, you can't come back here?

A. Yes. [138]

EXHIBIT K

Form Approved

Budget Bureau No. 43-R234.1

RENUNCIATION OF UNITED STATES NATIONALITY

To the Attorney General

Department of Justice

Washington 25, D. C.

I, Mae Miye Murakami, was born at Mountain View,
(First Name) (Middle Name) (Last Name) (City)
Santa Clara, California, on Nov. 18, 1917.
(County or Province) (State or Country) (Date)

My permanent residence is (if present residence not
permanent, state last permanent residence) 1048 - 9th St.,
(Street)
Santa Monica, Cal.
(City) (State)

I am a national of the United States by virtue of
birth—~~naturalization~~.
(strike out word not applicable)

I hereby formally renounce my United States national-
ity and all of its rights and privileges and abjure and re-
nounce all allegiance to the United States of America in
accordance with Section 401(i) of the Nationality Act of
1940 as amended.

I request the Attorney General's approval of this renunciation of nationality.

/s/ Mae Miye Murakami
(Signature)

(Notices)
(Distributed)
(on)
(9/27/45—M.L.)

* * *

The above formal written renunciation of nationality was made and signed in my presence and before me, a Hearing Officer designated by the Attorney General pursuant to his regulations of October 6, 1944 (8 C. F. R. 316).

I recommend: Approval

/s/ Joseph J. Shevlin
Hearing Officer

March 14, 1945
(Date)

Tule Lake, Cal.
(Place)

* * *

Approved as not contrary to the interests of national defense.

Washington, D. C., May 3, 1945

Francis Biddle
Attorney General [139]

EXHIBIT L

7516-G H, Tulelake

Newell, California

August 30, 1945

Mr. E. J. Ennis
Enemy Alien Control Unit
Department of Justice
Washington, D.C.

Dear Mr. Ennis:

Several months ago, I renounced by United States citizenship which I regret very much. My final papers have not come so I am writing in hopes that this letter reaches you in time.

At the time I sent my application in, the members of the organization made it so that to have peace around the block one just had to renounce his citizenship. The pressure was so bad we even had to join this organization, but we managed to withdraw later.

Also at that time, I thought that my husband, who is an alien and I, who is a citizen, would be separated so the only way was to renounce my citizenship and remain together.

At the relocation office I found out that my husband is on the free list while I am not; just because of my citizenship.

For the above reasons, I would like you to reconsider cancellation of my renunciation of citizenship. I am

asking for a parole from Tulelake so I can go out with my husband.

Am anxiously waiting for a reply. I remain,

Yours very truly,

/s/ Mae Miye Murakami

Mae Miye Murakami

Family no. 2959-B

Army I.D. 4635-B

(Department of Justice)

(Received Sep 11 1945)

(Alien Enemy Unit) [140]

EXHIBIT M

REPORT AND RECOMMENDATION OF HEARING OFFICER

D. J. File No. 146-54-4648

Name: Murakami, Mae Miye nee Yoshinaga

Place of Birth: Mountain View, Calif.

Date of Birth: November 18, 1917

Last address before evacuation: Santa Monica, Calif.

Marital Status: Married

Children: Three sons, ages 2 yrs, 1 yr, and 29 days

Names, citizenship and addresses of immediate relatives (include parents, spouse, children, brothers, and sisters. Indicate whether Japanese or United States national or renunciant.)

Husband,	Yasuo Murakami,	Tule Lake Camp	Japan
Son,	Koichi	"	U.S.A.
"	Makato	"	U.S.A.
"	Junzo	"	U.S.A.
Mother,	Tsuru Yoshinaga,	Brighton, Colo.	Japan
Brothers,	Suyeki	"	U.S.A.
"	George	" , U.S. Army overseas	U.S.A.
Sister,	Shizue Murakami,	Venice, Calif.	U.S.A.
Sister,	Matsuye Ogata,	Marysville, Calif.	U.S.A.
"	Mary Yoshinaga,	Brighton, Colo.	U.S.A.

Dependency of any of these on subject or dependency of subject on any of them. Give reasons therefor. Three children

List names, etc. of any members of immediate family presently serving in or who have been honorably discharged from the armed forces of the United States. Brother, George Yoshinaga, U.S. Army overseas.

Page 1—Case No. 2854 [141]

Reasons for renunciation of United States nationality: Because I was afraid of being separated from my husband.

Give any reasons peculiar to this individual case indicating special hardship to be created by removal. Explain in detail. Three American-born children.

If it should be determined that members or a member of your immediate family should be removed to Japan, do you wish to accompany them or remain in the United States? None likely to be removed.

Remarks or observations by Hearing Officer: Class 2-A-1 Three American-born children

(Continue on additional page if necessary)

On the answers to the foregoing questions and upon the further oral examination of the subject listed below, it is recommended that said subject (not) be removed from the United States.

/s/ R. J. Norene
Hearing Officer

/s/ Joseph J. Shevlin

/s/) Trent Doser

Dated, Tule Lake, California, January 25, 1946

Page 2—Case No. 2854 [142]

EXHIBIT N

In the Matter of

MIYE MAE MURAKAMI

(nee Yoshinaga)

Alien Enemy

D. J. File No.

146-54-4648

b. 11-18-17

ORDER

The above-named alien enemy having been interned by order dated August 31, 1945; and it appearing from a reconsideration of all the evidence bearing upon this matter that said alien enemy should be released; Now, Therefore,

It Is Ordered that said order dated August 31, 1945, be, and the same hereby is vacated and set aside; and it is Further Ordered that said alien enemy be released.

/s/ Tom C. Clark
Attorney General

Dated, Feb 21 1946 [143]

[Title of District Court and Cause]

AFFIDAVIT OF CHARLES M. ROTHSTEIN

District of Columbia—ss

Charles M. Rothstein, having been duly sworn, deposes and says:

First, that he is now acting as assistant to the Director of Alien Enemy Control in the Department of Justice in charge of the administration of the renunciation program and has charge of and is personally acquainted with the records relating thereto; and that he was duly appointed a hearing officer by the Attorney General and was authorized to conduct examinations, take testimony and make recommendations to the Attorney General as to the basis for his finding, pursuant to Section 401(i) of the Nationality Act of 1940, as amended, as to whether the approval of renunciation of United States nationality on the part of applicants for such renunciation would not be contrary to the interest of national defense; and that he personally supervised the hearings subsequently accorded renunciants of United States nationality, at the Tule Lake Segregation Center, and at the Santa Fe Internment Camp, in connection with their applications for permission to remain in the United States.

Second, that in his capacity as the person charged with maintenance of the records relating to renunciation of United States nationality, the affiant received from Plaintiff Inouye a letter dated February 21, 1945, requesting an application form upon which to renounce United States [144] nationality. (A copy of this letter is attached as Exhibit No. 1.)

Third, that affiant subsequently received from Plaintiff Inouye the executed application for permission to renounce United States nationality, dated March 7, 1945. (A copy of this application form is attached as Exhibit No. 2.)

Fourth, that in his capacity as hearing officer, affiant did, on July 9, 1945, accord Plaintiff Inouye a hearing in connection with the above mentioned application and did permit said plaintiff, in his presence, to execute the formal renunciation of United States nationality. (A copy of the transcript of hearing and a copy of the Renunciation of United States Nationality form are attached as Exhibits Nos. 3 and 4, respectively.)

Fifth, that the hearing accorded Plaintiff Inouye by the affiant was a private hearing and that with the exception of the stenographer, a civil service employee of the Caucasian race, there was no other person present at the hearing in addition to the said plaintiff and the affiant.

Sixth, that the affiant was thoroughly convinced that Plaintiff Inouye genuinely desired to renounce his United States nationality, that he understood the meaning of renunciation and the consequences thereof and that his application for renunciation was the result of a voluntary act on his part and not one of duress or coercion.

Seventh, that affiant recommended approval of Plaintiff Inouye's application to renounce, as not contrary to the interests of national defense, pursuant to Section 401(i) of the Nationality Act of 1940, as amended, and that said application was approved by the Attorney General on August 7, 1945. (See Exhibit No. 4, attached.)

Eighth, that thereafter the affiant received from Plaintiff Inouye a letter dated August 23, 1945, requesting

permission to withdraw his application to renounce and alleging that his renunciation was the result of undue influence and mistake. (A copy of this letter is attached as Exhibit No. 5.)

Ninth, that thereafter the affiant received from Plaintiff Inouye a telegram, dated August 28, 1945, reiterating the allegation that his [145] renunciation was the result of undue influence and mistake. (A copy of this telegram is attached as Exhibit No. 6.)

Tenth, that the affiant thereafter received from Plaintiff Inouye a form executed by said plaintiff on October 10, 1945, in which said plaintiff stated that he did not desire to be repatriated to Japan and that he never had any desire to go back to Japan, since he had never been there. (A copy of this form is attached as Exhibit No. 7.)

Eleventh, that during the month of January, 1946, and while Plaintiff Inouye was at the Santa Fe, New Mexico, Internment Camp, affiant received from said plaintiff an application, dated December 20, 1945, for permission to remain in the United States and a request that said plaintiff be granted a hearing and an opportunity to show cause why he should not be removed to Japan. (A copy of said application and request is attached as Exhibit No. 8.)

Twelfth, that affiant, as the person having supervision over the granting of such hearings, as requested by said plaintiff, scheduled his case for hearing on February 18, 1946.

Thirteenth, that the affiant, in his capacity as the person in charge of the records, knows that those records show that Plaintiff Inouye was accorded a hearing upon his application to remain in the United States, before a duly designated hearing officer, on February 18, 1946, and that

said hearing officer, having made a finding that said plaintiff was a "clear case of parental influence", recommended that he be not removed from the United States. (A copy of the findings and recommendation of the hearing officer, taken from the official files under affiant's supervision, is attached as Exhibit No. 9.)

Fourteenth, that affiant, as the person charged with the maintenance of the records, knows that those records show that the recommendation of the hearing officer was accepted by the Attorney General who, on March 27, 1946, signed an order releasing Plaintiff Inouye from further detention. (A copy of the order of the Attorney General, taken from the official files under affiant's supervision, is attached as Exhibit No. 10.) [146]

Fifteenth, that in his capacity as the person charged with maintenance of the records relating to renunciation of United States nationality, the affiant received from Plaintiff Shimizu a letter dated December 1, 1944, requesting an application form upon which to renounce United States nationality. (A copy of this letter is attached as Exhibit No. 11.)

Sixteenth, that affiant subsequently received from Plaintiff Shimizu the executed application for permission to renounce United States nationality, dated December 28, 1944. (A copy of this application form is attached as Exhibit No. 12.)

Seventeenth, that in his capacity as hearing officer, affiant did, on January 16, 1945, accord Plaintiff Shimizu a hearing in connection with the above mentioned application and did permit said plaintiff, in his presence, to execute the formal renunciation of United States nationality. (A copy of the transcript of hearing and a copy of the

Renunciation of United States Nationality form are attached as Exhibits Nos. 13 and 14, respectively.)

Eighteenth, that the hearing accorded Plaintiff Shimizu by the affiant was a private hearing and that with the exceptions of the stenographer and the interpreter, both civil service employees of the Caucasian race, there was no other person present at the hearing in addition to the said plaintiff and the affiant.

Nineteenth, that the affiant was thoroughly convinced that Plaintiff Shimizu genuinely desired to renounce her United States nationality, that she understood the meaning of renunciation and the consequences thereof and that her application for renunciation was the result of a voluntary act on her part and not one of duress or coercion.

Twentieth, that thereafter affiant received from Plaintiff Shimizu a letter dated March 1, 1945, requesting approval of her renunciation. (A copy of this letter is attached as Exhibit No. 15.) [147]

Twenty-first, that thereafter affiant received from Plaintiff Shimizu a letter dated March 16, 1945, requesting repatriation to Japan on the next exchange of nationals. (A copy of this letter is attached as Exhibit No. 16.)

Twenty-second, that affiant recommended approval of Plaintiff Shimizu's application to renounce, as not contrary to the interests of national defense, pursuant to Section 401(i) of the Nationality Act of 1940, as amended, and that said application was approved by the Attorney General on May 3, 1945. (See Exhibit No. 14, attached.)

Twenty-third, that thereafter the affiant received from the parents of Plaintiff Shimizu a letter dated November 5, 1945, stating that said plaintiff had changed her mind and desired to remain in this country forever. (A copy of this letter is attached as Exhibit No. 17.)

Twenty-fourth, that the affiant thereafter, as the person having supervision over the granting of mitigation hearings to show cause why renunciants should not be removed to Japan, scheduled Plaintiff's Shimizu's case for hearing on January 15, 1946.

Twenty-fifth, that the affiant, in his capacity as the person in charge of the records, knows that those records show that Plaintiff Shimizu was accorded a hearing upon her application to remain in the United States, before a duly designated hearing officer, on January 15, 1946, and that said hearing officer, having made a finding that the presumption of disloyalty in her case was not sufficiently strong to warrant removal, recommended that she be not removed from the United States. (A copy of the findings and recommendation of the hearing officer, taken from the official files under affiant's supervision, is attached as Exhibit No. 18.)

Twenty-sixth, that affiant, as the person charged with the maintenance of the records, knows that those records show that the recommendation of the hearing officer was accepted by the Attorney General who, on February 13, 1946, signed an order releasing Plaintiff Shimizu from further detention. (A copy of the order of the Attorney

General, taken from the official files under affiant's supervision, is attached as Exhibit No. 19.)

CHARLES M. ROTHSTEIN

Subscribed and sworn to before me this 20th day of March, 1947.

(Seal)

MARY R. McLEAN

Notary Public.

My Commission Expires Oct. 14, 1951. [148]

EXHIBIT NO. 1

24-7-1

Manzanar, Calif.

February 21, 1945

Department of Justice

Washington, D. C.

To Who Ever It May Concern.

Dear Sir:

My name is Yuichi Inouye, a citizen of the United States, who wishes to denounce his citizenship papers since he has repatriated and has no leave clearance who would like to join his friends in a internment camp.

Hope you will attend to this matter soon.

Thank you.

/s/ Yuichi Inouye [149]

EXHIBIT NO. 2

Form Approved

Budget Bureau No. 43-R233

APPLICATION FOR PERMISSION TO RE-
NOUNCE UNITED STATES NATIONALITY

To the Attorney General

Department of Justice

Washington 25, D. C.

I, Albert Yuichi Inouye, hereby state that I am a United States citizen and desire to renounce my United States nationality pursuant to Section 401(i) of the Nationality Act of October 14, 1940 as amended by Public Law 405, 78th Congress, Second Session, and pursuant to the regulations promulgated by the Attorney General on October 6, 1944, 9 F. R. 12241, and hereby request the approval of the Attorney General of my renunciation of nationality as being not contrary to the interests of national defense. I further make the following statements:

1. I was born at Berros, San Luis Obispo, California,
(Town or City) (Province or County) (State or Country)
on May 30, 1927;
(Date)
 2. I reside at 24-7-1, Manzanar, California;
(Street or P. O. Address) (City) (State)
 3. I am a national of the United States by virtue of Birth in the U. S.
-
.....
.....

(If a national by birth in the United States, so state; if naturalized, give name and place of the court in the United States before which naturalization was granted and the date of such naturalization.) An applicant should submit with this application any passport or certificate of citizenship he may have in his possession.

4. I have resided in the following countries other than United States since birth or naturalization (give approximate dates). If none, so state.....
5. I last entered the United States at (give name of port and approximate date).....
6. I have the following close relatives (including spouse, parents, children, brothers and sisters)

Name	Relationship	Address	Citizenship
Geo. Kikuji Inouye	Father	24-7-1	None (Issei)
Shizue Inouye	Mother	" " "	" "
Lily Inouye	Sister	24-6-4	Yes
Yoko Inouye	"	24-7-1	"
Minomatsu Inouye	Grandfather	24-6-4	None (Issei)

7. My education has been as follows:

School	Location	Date	Type of Studies Pursued
		1932	
Grammar School	W.L.A.	1937	
		1937	
Junior High	Westwood	1941	
		1941	
High School	Rel. Center	1944	General Diploma
			[151]

8. I have had the following military service: (If no service or training, state "none".)

Country	Branch of Service	Rank	Year
	None		

9. My United States Selective Service classification is as follows: None

10. I hereby declare that the information given above is true and correct to the best of my knowledge and belief. I fully understand that if permitted to renounce my United States nationality I will divest myself of all rights and privileges thereunto pertaining.

Signature Yuichi Inouye

Date March 7, 1945 [152]

EXHIBIT NO. 3

HEARING ON RENUNCIATION OF CITIZENSHIP

Applicant:	Albert Yuichi Inouye
Hearing Officer:	Charles M. Rothstein
Stenographer:	Barbara Dougherty
Interpreter:	None
Case No.:	4689
Date:	July 9, 1945

By Hearing Officer to Applicant:

Q. What is your name?

A. Albert.

Q. Your full name?

A. Albert Yuichi Inouye.

Q. Where were you born?

A. Me?

Q. Yes.

A. Berros.

Q. Berros, California?

A. San Luis Obispo County.

Q. When were you born?

A. 1927.

Q. What month?

A. May 30th.

Q. What was your home address before you were evacuated?

A. West Los Angeles.

Q. What street number?

A. 1843 Corinth.

Q. Los Angeles?

A. West Los Angeles.

Q. Have you made an application to renounce your United States nationality?

A. Yes.

Q. Is this your application?

A. Yes.

Q. Did you sign this application on your own free will?

A. Yes.

Q. Have you ever lived in Japan?

A. No.

Q. Are you married or single?

A. Single. [153]

Q. Where do your mother and father live?

A. Huh?

Q. Do they live in this center?

A. Yes, in this center.

Q. Why do you want to renounce your United States nationality?

A. I don't know—well—(long pause).

Q. Why do you want to renounce your nationality? You made an application in March that you wanted to renounce your nationality.

A. Go back to Japan.

Q. Have your parents made an application to go back to Japan?

A. Yes, I'm the only son and I want to go with them.

Q. You feel that your loyalty is to Japan and not to the United States?

A. No.

Q. You want to go to Japan and live there permanently?

A. No.

Q. You don't?

A. Just go back.

Q. You realize that if you go to Japan after renouncing your nationality you will probably not be permitted to re-enter the United States?

A. I'll go some place else.

Q. You know that you could go to Japan with your parents after the war without renouncing your nationality?

A. (Long pause.)

Q. Do you know that?

A. I guess so.

Q. You realize that if you renounce your United States nationality that you give up all rights and privileges of United States citizenship?

A. Yes.

Q. Will you read this form over?

A. (Mr. Inouye reads Form No. 43-R234.1.)

Q. You understand it?

A. Yeah.

Q. If that is what you want will you sign right there? Sign it as it is written there.

(Signs formal oath of renunciation of citizenship, after same is explained to him.) [154]

EXHIBIT NO. 4

Form Approved

Budget Bureau No. 43-R234.1

RENUNCIATION OF UNITED STATES
NATIONALITY

To the Attorney General
Department of Justice
Washington 25, D. C.

I, Albert Yuichi Inouye, was born at Berros, San Luis
(First Name) (Middle Name) (Last Name) (City) (County or
Obispo, Calif., on 5/30/27.
Province) (State or Country) (Date)

My permanent residence is (if present residence not
permanent, state last permanent residence) 1843 Corinth,
W. Los Angeles, Calif.
(City) (State)

I am a national of the United States by virtue of
birth—~~naturalization~~.
(strike out word not applicable)

I hereby formally renounce my United States nationality
and all of its rights and privileges and abjure and re-
nounce all allegiance to the United States of America in
accordance with Section 401(i) of the Nationality Act
of 1940 as amended.

I request the Attorney General's approval of this re-
nunciation of nationality.

/s/ Albert Yuichi Inouye
(Signature)

Notices
Distributed
on
11/14/45 M.L.

The above formal written renunciation of nationality was made and signed in my presence and before me, a Hearing Officer designated by the Attorney General pursuant to his regulations of October 6, 1944 (8 C.F.R. 316).

I recommend: approval

7/9/45

(Date)

Manzanar, Calif.

(Place)

/s/ Charles M. Rothstein
Hearing Officer

* * *

Approved as not contrary to the interests of national defense.

Washington, D. C. Aug. 7, 1945

/s/ Tom C. Clark
Attorney General [155]

EXHIBIT NO. 5

August 23, 1945

Hon. Tom Clark	(Office of the)
Attorney General of the United States	(Received)
Washington 25, D. C.	(August 27, 1945)
	(Attorney General)

Dear Sir:

I want to withdraw my application for renunciation of my American citizenship, and I disaffirm that application for the reason that I made it originally before I was 18 years of age, for the reason that I am still a minor under the age of 21 years, and for the reason that I exe-

cuted it under a combination of circumstances which amounted to undue influence and mistake. I ask your consideration and your assistance if possible in correcting the situation in which I find myself.

I have received no word that my application has been approved by you, and I hope that this letter will serve to cancel and withdraw my application before it is approved. However, if, in your opinion, it cannot have that effect, or if you have already approved my application, I do want to disaffirm it for the reasons given. If I should no longer have American citizenship, my position will be particularly unfortunate because under the existing laws I will have no way of regaining my American citizenship through naturalization. I am not a citizen of any other country, and I have no desire to become a citizen of any other country nor is there any other country to which I want to go. Under these circumstances I will be a stateless person, a man without a country, living in my native country without any of the privileges of a citizen and without hope of ever gaining them.

It is true that if this happens it will be by my own act, but I can only say that I am not yet a man, and that the circumstances were such that I was under strong pressure and did not know or realize what I was doing.

My parents are alien Japanese, but my father has not been in Japan since 1906, and I have never been there. Therefore I owe no loyalty to Japan and never had any. However, my parents have never been eligible to citizenship, and while they have strong ties with the United States, they have never been able to become part of this country in every sense and therefore they have never been able to break all of their ties with Japan.

The evacuation was a shock to my parents and to me and my sisters. Not only was it a shock but it also caused our family to lose what we had, a car, which was nearly paid for, and a home, which was held in trust for me. This happened while my father was interned, and all of these experience made him feel that there would be no future for him or my mother, except in Japan. I felt that it was my duty as the only son to go with them and to help get them settled in Japan, but I never had any idea of staying [156] there permanently. I think that my attitude toward going to Japan was brought out quite clearly in the interview I had with Mr. Rothstein. If my parents had not wanted to go to Japan I would not have ever thought of asking for repatriation, and if I had not been influenced by the evacuation and the situation in camp, I know that I would have done everything expected of any other citizen of this country.

The result of our repatriation requests was that none of our family could leave Manzanar, and when the Army began to exclude people individually, they put me on the segregation list and all that I could look forward to was being held here and finally transferred to Tule Lake. The Army officer had talked to me about renouncing my citizenship, and it seemed to me that would be the next step, so in March, before I was even 18 years old, I made that application. Then I had a hearing in Manzanar on July 9. I had just passed 18 on May 30. I was confused about everything, and so I signed the papers, but I did not realize what I was getting myself into.

I hope that you will help me get out of this situation, and if I cannot, I hope that I will be allowed to relocate with my family, and maybe some day I can earn my citizenship back again.

Very truly yours,

Albert Yuichi Inouye

24-7-1

Manzanar, California [157]

EXHIBIT NO. 6

WESTERN UNION

1945 Aug 28 PM 11 07

TA 50

T. BE589 NL PD-TDPN MANZANAR CALIF 28

ATTORNEY GENERAL UNITED STATES

WASHDC-

I WITHDRAW MY RENUNCIATION APPLICATION AND DISAFFIRM IT BECAUSE OF MY MINORITY AT TIME OF ORIGINAL APPLICATION AND UNDUE INFLUENCE AND MISTAKE. I AM NOT A CITIZEN OF JAPAN OR ANY COUNTRY OTHER THAN THE UNITED STATES AND RESPECTFULLY REQUEST YOUR CONSIDERATION AND ASSISTANCE IN MY SITUATION LETTER FOLLOWS -

ALBERT YUICHI INOUE [158]

EXHIBIT NO. 7

Form approved.

Budget Bureau No. 43-R237.

APPLICATION FOR NON-REPATRIATION

(By alien of enemy nationality under jurisdiction of
Immigration and Naturalization Service)

I, Yuichi Inouye, also known as Al Inouye, residing
at Immigration Internment Camp, Santa Fe, Santa Fe,
(Number and street) (City or town) (County)
New Mexico, hereby apply for Non-Repatriation.
(State)

In support of my application, I submit the following
facts:

- (1) I was born in San Luis Obispo County, California,
(City or town) (County, district,
province or state)

United States on May 30, 1927

(Country) (Gregorian calendar) (Japanese calendar)

- (2) My nationality is: [] German [] Italian [X] Jap-
anese [] Dual..... [] Other.....
(Specify) (Specify)

- (3) My profession(s) or occupation(s) is (are) Student

- (4) My last permanent address in the United States
West Los Angeles, California, United States
(City or town) (County, district, province or State) (Country)

- (5) My address at the time of my apprehension was
Manzanar WRA, Manzanar, California

- (6) My nearest relative in Japan Nearest relatives live
(Name)
in Kumemoto-ken, Tamana-gun, Midori-mura, Japan
(Relationship) (Complete address)

- (7) My desires regarding repatriation are indicated in the box checked below. (Check and complete approximate box.)

I Do Not Desire to Be Repatriated.

[] I desire to be repatriated to
unconditionally and without qualification.

[] I desire to be repatriated to
if possible; otherwise to

[] I desire to be repatriated to
Only if the persons named below accompany me.

- (8) I desire that the following persons be repatriated with me: (Does Not Apply)

(Each such person, if 18 years of age or over, must submit a separate application.)

Name	Age	Relationship	Country of Birth	Nationality	Present Address
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(Department of Justice)

(Received Oct 15 1945)

(Alien Enemy Unit) [159]

- (9) The following additional facts or comments are submitted in support of my application:

I never had any desire to go back to Japan, since I have never been there.

My family are planning to relocate to Los Angeles in the near future and I would like very much to join them in Los Angeles.

My act of renouncing of my United States citizenship I realize now was a big mistake, and I ask your

consideration and your assistance if possible in correcting the situation I find myself.

/s/ Yuichi Albert Inouye
(Signature of petitioner)

October 10, 1945
(Date)

Witnessed:

/s/Louis Vinzi
(Signature)

CERTIFICATE OF REVIEWING OFFICER

I have reviewed the foregoing application for repatriation and believe, for the reasons stated below, that:

- ☐ The application has outstanding merit.
- ☐ The application has substantial merit.
- ☒ The application has some merit.

(Reasons)

This applicant states that he renounced his citizenship more out of loyalty to his parents than loyalty to Japan. He seems to realize that as far as his citizenship goes it can never again be returned to him. The fact that his parents have not changed their views as to repatriation seems to the undersigned the applicant's real reason for desiring non-repatriation. Some consideration may be given an 18-year old boy loyalty to his parents but from questioning the applicant it seems doubtful that any other pressure or duress was exerted as he implies. It must be remembered that a great many other 18-year old American boys were in the Armed Forces.

/s/ Louis Vinz
(Signature of reviewing officer)

Louis Vinz, Patrol Inspector [160]
(Title)

EXHIBIT NO. 8

APPLICATION FOR HEARING

I, Albert Yuichi Inouye, also known as Al Inouye, residing at Barrack No. 13-E, Alien Internment Camp, Santa Fe, New Mexico, hereby apply for a hearing as hereinafter indicated.

In support of my application, I submit the following facts:

- (1) I was born in Berros, San Luis Obispo, California
(City or town) (County) (State)
on May 30, 1927
(Gregorian calendar)
- (2) My last permanent address which I was residing is
West Los Angeles, Los Angeles, California, United
(City or town) (County) (State)
States
(Country)
- (3) I was transferred from Manzanar W.R.A. Calif.
(Name of center)
on Sept. 8, 1945 by means of Closing of the Reloca-
(Date)
tion Center
- (4) My nearest relative in this country is Mrs. Shizuye
(Name)
Inouye, Mother, now residing at 16780 Oakview,
(Relationship) (Complete
Encino, California % Mr. Samuel Fink
address)
- (5) My desire for the hearing to be held is for clarifying
my status, as to the merit of restoration of the citi-
zenship, by cancelling the renunciation.

- (6) The following additional facts or comments are submitted in support of my application:

I desire to remain in the United States for the following reasons:

1. At the time of my renunciation I did not know any legal knowledge and realize what I was getting into, because I was a minor under the age of 21 years of age.
2. I have never been to Japan and have no desire to go there.
3. Because my family is remaining in this country now living at Encino, California and I would like to join them and remain in this country.
4. I have never been in any submersive activities or organizations and I am not a pro-japanese trouble-maker.

/s/ Albert Yuichi Inouye
(Signature of petitioner)

(Department of Justice)
(Received Jan 8 1946)
(Alien Enemy Unit)

December 20, 1945 [161]

(Date)

EXHIBIT NO. 9

REPORT AND RECOMMENDATION OF
HEARING OFFICER

D. J. File No. 146-54-4689

Name: Albert Yuichi Inouye

Place of Birth: Berros, Calif.

Date of Birth: May 30, 1927

Last address before evacuation: W. Los Angeles,
Calif.

Marital Status: Single

Children:

Names, citizenship and addresses of immediate relatives (include parents, spouse, children, brothers, and sisters. Indicate whether Japanese or United States national or renunciant).

George Kikuji Inouye, Father, Encino, Calif.	Alien
Shizue " Mother "	"
Lily " Sister Bel-Air, Los Angeles,	U. S. cit.
Yoko " " Encinco, Calif.	U. S. cit.

Dependency of any of these on subject or dependency of subject on any of them. Give reasons therefor. Parents. Subject is an only son.

List names, etc. of any members of immediate family presently serving in or who have been honorably discharged from the armed forces of the United States. None

Reasons for renunciation of United States nationality: Parents instructed him to renounce and accompany them to Japan.

Give any reasons peculiar to this individual case indicating special hardship to be created by removal. Explain in detail. Parents. Subject is an only son.

If it should be determined that members or a member of your immediate family should be removed to Japan, do you wish to accompany them or remain in the United States? Not applicable.

Remarks or observations by Hearing Officer: No organizational activities; excellent employment record at Manzanar and Santa Fe. Has never been to Japan; thoroughly Americanized. Clear case of parental influence. See transcript of renunciation hearing. At that time stated that he had no feeling of loyalty to Japan. Answered questions 27 and 28 on Army Registration form in the affirmative.

Class II a 2.

(Continue on additional page if necessary)

On the answers to the foregoing questions and upon the further oral examination of the subject listed below, It is recommended that said subject (not) be removed from the United States.

/s/ Ollie Collins
Hearing Officer

Dated, Santa Fe., N. Mex., Feb. 18, 1946.

EXHIBIT NO. 10

In the Matter of
ALBERT YUICHI INOUE
Alien Enemy

D. J. File No.
146-54-4689
b. 5/30/27

ORDER

The above-named alien enemy having been interned by order dated November 29, 1945; and it appearing from a reconsideration of all the evidence bearing upon this matter that said alien enemy should be released; Now, Therefore,

It Is Ordered that said order dated November 29, 1945, be, and the same hereby is vacated and set aside; and it is

Further Ordered that said alien enemy be released.

/s/ Tom C. Clark
Attorney General

Dated, Mar 27 1946 [164]

EXHIBIT NO. 11

December 1, 1944
Newell, California

The Attorney General
Department of Justice
Washington 25, D. C.
Mr. Edward J. Ennis, Director
Department of Justice
Alien Enemy Control Unit
Washington, D. C.

Dear Mr. Ennis:

I desire to renounce my United States Nationality in accordance to recent government promulgation, so will you kindly forward me a copy of government-printed application form No. 43,-R233?

Respectfully yours,

/s/ Mutsu Shimizu [165]

EXHIBIT NO. 12

Form Approved

Budget Bureau No. 43-R233

APPLICATION FOR PERMISSION TO RE-
NOUNCE UNITED STATES NATIONALITY

To the Attorney General

Department of Justice

Washington 25, D. C.

I, Mutsu Shimizu, hereby state that I am a United States citizen and desire to renounce my United States nationality pursuant to Section 401(i) of the Nationality Act of October 14, 1940 as amended by Public Law 405, 78th Congress, Second Session, and pursuant to the regulations promulgated by the Attorney General on October 6, 1944, 9 F.R. 12241, and hereby request the approval of the Attorney General of my renunciation of nationality as being not contrary to the interests of national defense. I further make the following statements:

1. I was born at Los Angeles,,
(Town or City) (Province or County)
California, on July 4th, 1914;
(State or Country) (Date)

2. I reside at 402-C, Newell, California;
(Street or P. O. Address) (City) (State)
3. I am a national of the United States by virtue of
the birth in the United States

(If a national by birth in the United States, so state; if naturalized, give name and place of the court in the United States before which naturalization was granted and the date of such naturalization.) An applicant should submit with this application any passport or certificate of citizenship he may have in his possession.

[166]

4. I have resided in the following countries other than United States since birth or naturalization (give approximate dates). If none, so state. Japan since 1920 to 1931.
5. I last entered the United States at (give name of port and approximate date) San Francisco on April 1931
6. I have the following close relatives (including spouse, parents, children, brothers and sisters)

Name	Relationship	Address	Citizenship
Akira Shimizu	Husband	Santa Fe Detention Camp	Japan
Yosuke Shimizu	Son	402-C Newell, Calif.	U.S.A. •
Hiroko Shimizu	Daughter	" " "	"
Yoneko	"	" " "	"

7. My education has been as follows:

School	Location	Date	Type of Studies Pursued
Grammer	Japan	1921-27	
High School	"	1927-1931	

[167]

8. I have had the following military service: (If no service or training, state "none".) None
- | Country | Branch of Service | Rank | Year |
|---------|-------------------|------|------|
| ----- | | | |

9. My United States Selective Service classification is as follows:
10. I hereby declare that the information given above is true and correct to the best of my knowledge and belief. I fully understand that if permitted to renounce my United States nationality I will divest myself of all rights and privileges thereunto pertaining.

Signature /s/ Mutsu Shimizu

Date December 28, 1944 [168]

EXHIBIT NO. 13

HEARING ON RENUNCIATION OF CITIZENSHIP

Applicant: Mutsu Shimizu
Hearing Officer: Charles M. Rothstein
Stenographer: Dolores H. Jaramillo
Interpreter: Eugenia Cochran
Case No.: 387 DJ #146-54-924
Date: January 16, 1945

By Hearing Officer to Applicant:

Q. What is your name?

A. Mutsu Shimizu.

Q. Where were you born?

A. Los Angeles, California.

Q. When were you born?

A. July 4, 1914.

Q. Do you understand that I am a hearing officer and I am here to give you a hearing because you made an application to renounce your United States nationality?

A. Yes.

Q. I show you this application form; do you recognize it as your own?

A. Yes.

Q. Did you sign this form?

A. Yes.

Q. Did you sign it of your own free will?

A. Yes, it was my own desire without being forced.

Q. Have you ever lived in Japan?

A. Yes, I have.

Q. When did you live in Japan?

A. From the time I was six until 1931.

Q. Where do your mother and father live?

A. In Japan.

Q. Are you married?

A. Yes.

Q. What is your husband's name?

A. Akira Shimizu. He is in Santa Fe. He was taken last month.

Q. Why do you want to renounce your United States nationality at this time?

A. I grew up in Japan and I had all of my training there.

Q. Do you understand that if you renounce your United States nationality you give up all rights and privileges of American citizenship?

A. Yes, I understand.

Q. Do you understand that if after renouncing your nationality you go to Japan you might never be permitted to return to the United States?

A. Yes, my husband is an Issei, so I understand that.

(Signs formal oath of renunciation of citizenship, after same is explained to her.)

EXHIBIT NO. 14

Form Approved

Budget Bureau No. 43-R234.1

RENUNCIATION OF UNITED STATES
NATIONALITY

To the Attorney General
Department of Justice
Washington 25, D. C.

I, Mutsu Shimizu, was born at Los Angeles,
(First Name) (Middle Name) (Last Name) (City)
Cal., U. S., on July 4, 1914.
(County or (State or (Date)
Province) Country)

My permanent residence is (if present residence not
permanent, state last permanent residence) 819 S. En-
cinita, San Gabriel, Cal.
(Street) (City) (State)

I am a national of the United States by virtue of
birth—~~naturalization~~.
(strike out word not applicable)

I hereby formally renounce my United States national-
ity and all of its rights and privileges and abjure and
renounce all allegiance to the United States of America
in accordance with Section 401(i) of the Nationality
Act of 1940 as amended.

I request the Attorney General's approval of this re-
nunciation of nationality.

/s/ Mutsu Shimizu
(Signature)

1/16/45
(Date)
Tule Lake, Cal.
(Place)

Notices
Distributed
on 10/2/1945 M. L.

* * *

The above formal written renunciation of nationality by Mutsu Shimizu, was made and signed in my presence and before me, a Hearing Officer designated by the Attorney General pursuant to his regulations of October 6, 1944 (8 C.F.R. 316).

I recommend: Approval

/s/ Charles M. Rothstein
Hearing Officer

1/16/45

(Date)

Tule Lake, Cal.

(Place)

* * *

Approved as not contrary to the interests of national defense.

Washington, D. C. May 3, 1945

Francis Biddle
Attorney General [170]

EXHIBIT NO. 15

402-C
Newell, Calif.
March 1, 1945

Attorney General
Department of Justice
Washington, D. C.

Dear Sir:

On January 18, 1945, I had my hearing for the renunciation of American citizenship by your representative. At the hearing I was informed that my renuncia-

tion would not become final until I am approved by the Attorney General.

Will you kindly give your Honor's attention in regards to my case.

Sincerely yours,

/s/ Mutsu Shimizu [171]

EXHIBIT NO. 16

402-C

Tule Lake Center

Newell, California

March 16, 1945

Mr. Charles Rothstein
Representative, Dept. of Justice
Tule Lake Center
Newell, California

Dear Sir:

Within the past few months, the Department of Justice representatives has been conducting renunciation hearings for persons eighteen years of age or over who desire to renounce United States citizenship. I have three minor children who, according to your statements, are not able to renounce their citizenship. It is my firm belief and determination that we as a family unit and not individually be repatriated to Japan on the next exchange of nationals. My husband is also interned at Santa Fe, New Mexico alien internment camp.

Will these children, who are unable to renounce their citizenship because they are minors, positively be included along with my husband if he is to be repatriated on the next exchange of nationals? If they are unable to re-

turn on the same vessel with him, what necessary measures would you advise in order to materialize this desire?

Your cooperation in informing me with the above matter will be greatly appreciated since I am involved in this situation.

Very truly yours,

/s/ Mutsu Shimizu

Mutsu Shimizu (Mrs.)

(Department of Justice)

(Received Mar 26 1945)

(Alien Enemy Unit) [172]

EXHIBIT NO. 17

November 5, 1945.

Gallup, New Mexico

War Department
Department of Justice,
Washington 25, D. C.

Dear Sir:

Re; Mrs. Mutsu Shimizu
address 402-C
Tulelake, California.

We the undersigned are the parents of the above person. Now we understand that she has changed her mind and desires to remain in this country forever. Also, we understand that she previously has renounced her citizenship that might be caused by such atmosphere in Tulelake Center, where such a formidable atmosphere often prevails in such a camp as Tulelake.

Now She realizes her wrong attitude and has changed her mind and wishes to stay in this country together with

her husband namely Akira Shimizu and their three children.

As the parents to foresaid Mutsu Shimizu, we heartily beg to Your Honor for your consideration on this case and please let them stay in this country, and we are to be sure that she was a good citizen in this country and will be the same in the future.

Yours truly,

/s/ Kichiji Chuman Father

/s/ Toyo Chuman Mother

P. O. Box 512

Gallup, New Mexico [173]

EXHIBIT NO. 18

REPORT AND RECOMMENDATION OF HEARING OFFICER

D. J. File No. 146-54-924

Name: Shimizu, Mutsu

Place of Birth: Los Angeles, California

Date of Birth: July 4, 1914

Last address before evacuation: 819 S. Encinita, San Gabriel, Calif.

Marital Status: married

Children: three

Names, citizenship and addresses of immediate relatives (include parents, spouse, children, brothers, and sisters. Indicate whether Japanese or United States national or renunciant).

Husband, Akira Shimizu, born in Japan, national of Japan; in Japan

Son, Yosuke, U. S. born, a minor. Tule Lake Center

Daughter, Hiroko, U. S. born, national of U. S., a minor, Tule Lake Center

Daughter, Yonako, U. S. born, national of U. S., a minor, Tule Lake Center

Father, Kichiji Chuman, national of Japan; Gallup, New Mexico

Mother, Toyo, national of Japan, with father

Brother, Masato, in the U. S. Army, stationed at Ft. Ord, Calif.

Dependency of any of these on subject or dependency of subject on any of them. Give reasons therefor. Three minor children dependent upon me and my husband.

List names, etc. of any members of immediate family presently serving in or who have been honorably discharged from the armed forces of the United States. Brother Masato, in the U. S. Army now stationed at Ft. Ord, California

Page 1—Case No. [174]

Reasons for renunciation of United States nationality: Thought that this war was going to last a long time and therefore she did not want to raise her children in this camp. Only way that she would be able to raise children properly would be to go outside of camp and resume normal life which was not possible in the United States, therefore, she had to renounce her citizenship and try to repatriate to Japan.

Bring out any factor which would indicate that the removal of this subject would cause an unusual hardship. Three minor U. S. born children

If it should be determined that members or a member of your immediate family should be removed to Japan, do you wish to accompany them or remain in the United States? In case husband is deported to Japan she would like to accompany him with her children. If he is already repatriated she desires to remain in the U. S.

Remarks or observations by Hearing Officer. Class II(a) (1) Three minor U. S. born children and a brother in the United States Army.

(Continue on additional page if necessary)

On the answers to the foregoing questions and upon the further oral examination of the subject listed below, it is recommended that said subject (not) be removed from the United States.

/s/ Bruce G. Barber
Hearing Officer

/s/ Ollie Collins

/s/ Charles M. Rothstein

Dated, Tule Lake, California, January 15, 1946
Ethel M. Fitzgibbons, Stenographer
Book II, Spokane District

EXHIBIT NO. 19

In the Matter of
MUTSU SHIMIZU
Alien Enemy

D. J. File No.
146-54-924

ORDER

The above-named alien enemy having been interned by order dated August 31, 1945; and it appearing from a reconsideration of all the evidence bearing upon this matter that said alien enemy should be released; Now, Therefore,

It Is Ordered that said order dated August 31, 1945, be, and the same hereby is vacated and set aside; and it is

Further Ordered that said alien enemy be released.

TOM C. CLARK
Attorney General

Dated, Feb. 13, 1946 [176]

Notice of Hearing for Motion for Summary Judgment on Behalf of Defendants; Motion for Summary Judgment on Behalf of Defendants; Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment; Affidavits of John L. Burling, Joseph J. Shelvin, Charles M. Rothstein, and Rosalie Hankey.

Received copy of the within legal papers above listed this 17th day of June, 1947. Frank F. Chuman, Attorney for Plaintiffs.

[Endorsed]: Filed Jul. 1, 1947. Edmund L. Smith, Clerk. [177]

[Title of District Court and Cause]

STIPULATION RE AFFIDAVIT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

It Is Hereby Stipulated by and between counsel for the respective parties hereto that the affidavit of Rosalie Hankey filed in support of defendants' motion for summary judgment may be considered upon the hearing of said motion without the signature of said Rosalie Hankey appended thereto. The affidavit in the form submitted is a copy of an original affidavit on file in the District Court for the Northern District of California.

Dated: This 2nd day of June, 1947.

A. L. WIRIN

FRED OKRAND

By Fred Okrand

Attorneys for Plaintiffs

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

Attorneys for Defendants

It Is So Ordered this 16 day of July, 1947.

JACOB WEINBERGER

Judge, United States District Court

[Endorsed]: Filed Jul. 17, 1947. Edmund L. Smith,
Clerk. [178]

[Minutes: Tuesday, August 12, 1947]

Present: The Honorable Jacob Weinberger, District Judge.

It is ordered that this cause be placed on the calendar of Hon. Chas. C. Cavanah for hearing motion of defendants for summary judgment. [179]

[Title of District Court and Cause]

NOTICE ON HEARING FOR MOTION FOR
SUMMARY JUDGMENT ON BEHALF
OF PLAINTIFFS

To the Defendants Herein and James M. Carter, United States Attorney, and Ronald Walker, Assistant United States Attorney, Their Attorneys:

You, and Each of You, Will Please Take Notice that on Monday, August 25, 1947, at the hour of 10:00 A. M. Plaintiffs will move the above-entitled Court for summary judgment on behalf of the plaintiffs and against the defendants in accordance with the written motion appended hereto.

A. L. WIRIN and FRED OKRAND

By A. L. Wirin

Attorneys for Plaintiffs [180]

[Title of District Court and Cause]

PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT

The plaintiffs move the Court for summary judgment in their favor against the defendants. The ground for said motion is that there is no genuine issue as to any material fact; and that the plaintiffs are entitled to judgment as a matter of law.

The motion will be based upon the records and files in said action, including the affidavits filed in behalf of the defendants, in support of the defendants' motion for summary judgment; as well as the affidavits filed in behalf of the plaintiffs in support of the plaintiffs' motion for summary judgment, and the memorandum of points and authorities in support of this motion appended hereto.

A. L. WIRIN and FRED OKRAND

By A. L. Wirin

Attorneys for Plaintiffs [181]

Received copy of the within Notice & Motion & Affidavits this 11th day of August, 1947. Ronald Walker, Asst. U. S. Atty., Attorney for Defts.

[Endorsed]: Filed Aug. 12, 1947. Edmund L. Smith, Clerk. [182]

[Title of District Court and Cause]

AFFIDAVITS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT: A. L. WIRIN, LOUIS M. NOYES, ROBERT H. ROSS, HARRY L. BLACK, MARVIN K. OPLER, JOHN ALDEN, FRITZ KUNKEL, MIYE MAE MURAKAMI, TSUTAKO SUMI and MUTSU SHIMIZU [183]

[Title of District Court and Cause]

AFFIDAVIT OF A. L. WIRIN

State of California

County of Los Angeles—ss.

A. L. Wirin, being first duly sworn, deposes and says: That he is attorney for the plaintiffs herein.

The defendants have heretofore caused to be filed with the Clerk of this Court an affidavit by Rosalie Hankey. Said affidavit (p. 2, line 4) refers to a study published by the University of California, of conditions at the Tule Lake Relocation Center, under the authorship of Dorothy S. Thomas and Richard Nishimoto. Said affiant further recites, in effect, that the observations of said affiant were submitted to said authors, and incorporated in said study.

Said study entitled "The Spoilage" is incorporated in this affidavit by reference, marked Exhibit "A" and submitted herewith as part of this affidavit.

For the convenience of the Court, extracts of said [184] study are set forth hereinbelow, also set forth hereinbelow are references to said study:

The general conclusions of said study pertaining to the causes of renunciations of citizenship by Tule Lake residents are thus set forth (p. 361) (all italics supplied):

“With mass renunciation of citizenship by Nisei and Kibei, the cycle which began with the evacuation was complete. Their parents had lost their hard-won foothold in the economic structure of America. They, themselves, had been deprived of rights which indoctrination in American schools had led them to believe inviolable. Charged with no offense, but victims of a *military misconception, they had suffered confinement behind barbed wire*. They had been stigmatized as disloyal on grounds often far removed from any criterion of political allegiance. They had been at the mercy of administrative agencies working at cross-purposes. They had yielded to parental compulsion in order to hold the family intact. They had been intimidated by the ruthless tactics of pressure groups in camp. They had become *terrified* by reports of the continuing hostility of the American public, and they had finally renounced their irreparably depreciated American citizenship.

“Many of them have since left the country, voluntarily, to take up life in defeated Japan. Others will remain in America, in the unprecedented [185] and ambiguous status of citizens who became aliens ineligible for citizenship in the land of their birth.”

References concerning the existence of violence, terror, and in some instances, murder, appear in Chapter X (p. 261), entitled “Informers, Suspicion, Beatings and Murder.”

Some of the beatings are described on p. 264 and p. 265. Threats of murder are recited at p. 268, the effect of the beatings considered at p. 269, the murder recounted at p. 271, threats of assassination are set forth at p. 273 and persons "were taken into protective custody" because of the fear of such assassination. The danger to the lives of many of the residents of the Center is set forth at p. 274. The continuance of the danger of violence is described at p. 276 so that those who had sought refuge felt that to leave said refuge was "equivalent to a death sentence" (p. 276). Even police officers in the Center, after the murder, heretofore referred to, were threatened and resigned under duress. (p. 277).

In Chapter XII, there is set forth, under the title "Resegregation," the nature and extent of "pressure tactics" prevalent in the Center. According to the study, certain residents of the Center "silenced their critics by physical violence or threats of violence" (p. 306); they used "terroristic tactics" (p. 307). Many residents "feared reprisals, they were afraid to say anything." (p. 313) At the camp, there was the constant fear of being forced to leave camp and resettle." (p. 315.) [186] According to one informant, "the majority of the people signed the petition under intimidation and ignorance." (p. 317) In soliciting signatures for certain petition, the Resegregationists "are also said to have used coercion and intimidation frequently." (p. 318.)

According to one resident: "I was pressured into signing up with the Resegregationist Group along with many others. We signed in order to prevent physical harm to ourselves and to the members of our family."

The Community Analyst reported that: "One aged anti-resegregationist was hit over the head and knocked unconscious (October 7)"

According to the study: "As was true in other periods of general tension in Tule Lake, the resurgence of violence was accompanied by widespread demoralization of the young people. Many cases of theft, vandalism, party crashing, and fist fights were reported. On the night of October 15, three elderly Issei returning from a meeting of a religious cult, were set upon by a gang of half a dozen young men. The men had refused to sign the resegregation petition and had advised other residents not to sign."

Further violence took place on October 30, (p. 319).

"Meanwhile, Resegregationist leaders became increasingly arrogant. At the *Sokoku* ceremony held in Block 84 (Ward VIII) on October 21, Kira is said to have incited the young man to violence and to have promised that he would take care of [187] them if they got into trouble. He quoted a Japanese proverb, which, while characteristically flexible in interpretation, could be translated to mean: 'To help the great cause, we have to kill those who stand in its way.' The connotation to most of the residents seemed to be that the opponents of the Resegregationists would be liquidated."

According to the study, "the underlying cause of this collective reaction (to give the appearance that they had applied or would apply for renunciation) was intimidation by the resegregationists and fear of violence." (p. 325)

The fear of terroristic tactics is mentioned again at p. 327.

Most directly relevant to the issue in the instant proceeding is Chapter XIII, entitled "Renunciation—Mass

Relinquishment of American Citizenship." Prior to the mass renunciations, according to the study, announcements made at the Tule Lake Center to the effect that the Center would be closed and that its occupants would be compelled to leave, resulted in "the immediate reaction of the Tule Lake residents was compounded of surprise, anxiety, doubt, and complacent rationalization."

Soon the "anxiety of the residents about their security increased" (p. 336). It was at this time that "resegregationist pressure upon the general population involved intensification of nationalistic activities, coercive and terroristic tactics directed against dissenters, and extensive propaganda."

Mental confusion and social pressure existed at this time. (p. 348) [188]

"The most prevalent explanation dealt with the pressure tactics of *Hokoku* and *Hoshi-dan* in forcing decisions to renounce upon members and unwilling nonmembers alike." (p. 353)

"There seemed to be a certain powerful group ruling the people of the center whom everyone feared." (p. 353)

According to the study "one out of five of the male renunciants and one out of four of the females were under 21 at the time of renunciation." (359)

The mass renunciations were "a collective phenomenon." (p. 360)

A. L. WIRIN

Subscribed and sworn to before me this 11th day of June, 1947.

(Seal)

MRS. TOYEKO CHUMAN

Notary Public in and for the County of Los Angeles,
State of California

My Commission expires Sept. 10, 1956. [189]

AFFIDAVIT

State of California

County of Los Angeles—ss.

Louis M. Noyes being duly sworn, deposes and says, as follows:

I was employed by the U. S. Department of the Interior as Attorney on the staff of the Solicitor of the War Relocation Authority from September 15, 1944 until May 20, 1946. After being briefed for a period of approximately two weeks in the office of the Solicitor of the War Relocation Authority in Washington, D. C., I was assigned to the Tule Lake Segregation Center in Modoc County, California, where I arrived and assumed the duties of Project Attorney on October 6, 1944.

My general duties included rendering legal advice: to the Project Director, the chief Government administrative official in charge of the Tule Lake Segregation Center; to the Administrative staff on official problems; and to the evacuee residents of the Center on all legal problems excepting those in which the Federal Government was an adverse party. I also submitted periodic reports, usually weekly, to the W. R. A. Solicitor in Washington, D. C. concerning the problems handled and the general situation of the evacuees.

In addition, special duties were assigned to me which included:

(1) Acting as Chairman of the Leave Clearance Board in the conduct of leave clearance hearings for evacuee residents of the Tule Lake Segregation Center who applied for transfer to a Relocation Center.

(2) Reviewing evidence developed by the Internal Security Officers concerning violations of Federal and State penal laws and regulations; advising the Project Director on the appropriate measures to be taken in connection with such violations and collaborating with the State and Federal law enforcement officers. [190]

3. Presenting evidence and otherwise assisting in the conduct of disciplinary hearings for evacuee residents charged with breach of peace or violation of Project Regulations.

4. Preparing special Project Regulations and otherwise assisting in the formulation of appropriate measures for maintaining law and order.

5. Liaison in such programs as: the Immigration and Naturalization general screenings and deportation hearings for aliens; the Department of Justice, War Division hearings on applications for renunciation of citizenship; the War Department review hearings of appeals from individual exclusion orders; and the Department of Justice, War Division, mitigation hearings for renunciants who applied for release from detention.

I have read the forty-four page affidavit of John L. Burling filed in this suit, and am personally familiar with all of the circumstances and conditions which prevailed at the Tule Lake Segregation Center referred to in his affidavit. First, I wish to call attention to the seeming inconsistencies of Mr. Burling's affidavit dated November 8, 1946 and statements made by Mr. Burling on January 18, 1945 while he was at Tule Lake respecting the questions of coercion and intimidation practiced by some of the evacuee residents of the Center upon their fellow residents.

On page 33 of his affidavit Mr. Burling says, "As has been said, none of the contemporary statements made by responsible War Relocation Authority officials at Tule Lake indicate a belief that coercion was a significant factor in renunciation, and none of the contemporary reports which I have seen indicate this. It came to be the opinion of some of the persons in the War Relocation Authority, however, in the spring and summer of 1945, that coercion was a factor, although it was not clear that these persons also understood what the word 'coercion' means in contemplation of [191] law."

In an open letter dated Jan. 18, 1945 addressed to the Chairman of the Sokuji Kikoki Hoshi Dan, and the Chairman of the Kokoku Seinen Dan, Mr. Burling stated as follows: "I am well aware that your two organizations have put pressure on residents of this center to exert loyalty to Japan, and that in a number of cases physical violence was employed . . . It is as treasonable to coerce others into asserting loyalty to Japan here as it would be outside. All these activities will stop."

On page 28 of his affidavit Mr. Burling relates the fact that the unexpected flood of renunciation actions caused concern both in Tule Lake and in Washington, and Mr. Burling adds, "I devoted considerable effort in endeavoring to understand the reasons for this development since it was hoped that in some way this flood might be stopped and some of those persons who were not in fact disloyal but merely disgruntled, dissuaded from throwing away their citizenship. Accordingly, I talked at great length with Mr. Ray Best, the Director of the center, Mr. Louis M. Noyes, the War Relocation Attorney, at the center, the Chief of the Internal Security Guard, the men of the Guards themselves, to the Colonel commanding

the troops stationed immediately at the Camp gate, to his security officers, and the many other experienced persons at the center . . . at Tule Lake, and particularly talked also to Dr. Marvin Opler, an anthropologist who was employed by the War Relocation Authority as what was called a community analyst whose job was solely to gather unusual information concerning the community and to report on community trends . . . I also talked to ministers and social workers and doctors, and to Miss Rosalie Hankey, an anthropologist employed by the Evacuee Alien Resettlement Study under the offices of the University of California, and who not being a Government representative was able to talk to the residents of the center and to meet less reserve and resentment. [192] Both in Tule Lake and in Washington in addition, I read many of the reports filed on Tule Lake from sometime prior to the commencement of the renunciation hearings up to and including that period."

In connection with the foregoing statements of Mr. Burling, I wish to explain that I had been assigned by the Project Director to serve as his liaison officer, to assist Mr. Burling with respect to securing the necessary facilities and personnel to arrange for the scheduling of interviews and hearings from the first day that Mr. Burling arrived at the Tule Lake in early December, 1944, and during all the time that he remained at Tule Lake Center. On occasion of both his visits, Mr. Burling and I were in very close and intimate contact. Inasmuch as Mr. Burling was primarily concerned with the holding of hearings he had comparatively little time within which to familiarize himself with all of the details of the manifold problems which prevailed in the every-day life of an isolated community of over 18,000 people residing within

a man-proof barbed wire enclosure, and he therefore of necessity could secure only brief highlights as to the facts concerning the life and problems of evacuees in the Center, and personal opinions or conclusions of the various persons named in his affidavit. Many of us, from whom Mr. Burling gained whatever information he relates, did complain to him that in addition to the known leaders of the disloyal organizations, there was a group of unknowns behind the scene, advisers and strategists, who were much more powerful than the known leaders and members of the disloyal organizations, and that these unknown advisers and strategists employed force through the use of "goon" squads.

We explained to Mr. Burling that many assaults had been committed upon the evacuee residents of the Camp, who were loyal to the United States but that because of the nature of the evacuee community within the barbed wire enclosure, the victims of such assaults could not be induced to identify either their assaulters [193] or the persons whom they suspected of instigating the assaults. At no time did Mr. Burling or any member of his staff personally or through agents or investigators conduct any investigation whatsoever, concerning any of the leaders of the disloyal organizations, or conduct investigations for the purpose of identifying the unknown behind-the-scenes advisers and strategists, except through the means of interviews during and solely incidental to renunciation and enemy alien hearings. On the other hand, I was in daily contact with a substantial segment of the evacuee Camp population, the chief of the Internal Security, Internal Security Officers, the Colonel, Peace Officers (comprised of evacuee police) Dr. Marvin Opler and Miss Rosalie Hankey, the anthropologists, as well

as the heads of many W. R. A. department staff members of the various other service and administrative departments at the Center. To me, as well as to most all of the other members of the War Relocation Authority Staff at the Center, it was quite evident that a great sense of fear was exhibited among most of the evacuees in the center. At times we could perceive a state of terror on the part of the evacuees, usually occurring after some evacuees had been assaulted by other unidentified evacuees.

Within a short time after arriving at the Tule Lake Segregation Center, and primarily as a result of my daily contacts with individual evacuee residents and with various groups and representatives of groups, I observed that there existed among the evacuees a general attitude of unfriendliness towards, and distrust of, government personnel. The consensus of opinion among the W. R. A. administrative Staff as well as presumably disinterested persons such as Sheriff Sharp and District Attorney Charles Lederer of Modoc County, California, was that the unfriendly, distrustful attitude of the evacuees was due primarily to their detention behind man proof barbed wire enclosure and under armed military guard. On numerous occasions I was told by some of the more [194] articulate evacuee residents, that we of the government staff were their jailers and that it was only natural to bear a resentment towards one's jailers.

It must be borne in mind that the evacuee population of some 18,000 people residing within the confines of the barbed wire enclosure at the Tule Lake Segregation Center comprised a conglomerate community of persons from all walks of life living in close proximity with one another not by reason of freedom of choice or selection, but solely under a predetermined program prescribed for them

by the Government. There was no opportunity for the people to segregate themselves into separate communities such as exist in the normal urban and rural life. Families that had lived in isolated rural communities found themselves flanked by strange families from urban communities without their knowing the character or background of such neighbors. The fishermen from Terminal Island, the farmers from the central valley, the merchants from Seattle, Portland, San Francisco and Los Angeles, the gamblers, the lawyers and doctors, the academicians, and even the prostitutes and criminals were co-mingled into a conglomerate community. The result was that any ordinary, decent, law-abiding family found it unwise and "unhealthy," to engage in ideological and political disputes with next door neighbors who might have been, in their pre-evacuation days, terroristic gamblers or even criminal fugitives. In normal communities on the outside of the Segregation Center if a persons or families did not get along with their neighbors they were free to move into other communities or to merely have nothing to do with the unfriendly and undesirable neighbors; and in the event that the neighbors threatened or used force upon them they could call upon the local authorities for protection with comparative immunity from revenge or retribution. In the type of community which existed at the Tule Lake Segregation Center, it was impossible for the normal law-abiding family to ignore the [195] pressures, coercion or intimidation from their neighbors.

The life of the evacuees in such an abnormal community was further complicated by the fact that although both United States citizens and their enemy alien relatives were equally under detention, the enemy aliens had recourse for their grievances under the terms of the Geneva

Convention which was recognized by our Government as applicable to Japanese nationals residing within the W. R. A. centers for evacuees while grievances of the citizens could not be considered by the protecting power or our own State Department. Furthermore, in establishing Tule Lake as the segregation center for the expedient purpose of segregating the presumably disloyal evacuees into one camp, a great many loyal and law-abiding citizens as well as aliens, found it necessary to live in close proximity with others who openly declared themselves to be loyal to Japan. Those persons who openly professed loyalty to Japan were, in many cases, fanatical and irrational and without a doubt were more anxious to impress their fellow evacuees within the camp and themselves that they would be acceptable to the Japanese government in the event of repatriation or exchange to Japan. Most of such extremists repatriated to Japan during December 1945 and January 1946.

It seems extremely significant that there is no record of an attempted escape of any evacuee resident of the Tule Lake Center over the age of 18 although many opportunities for escape did exist. The only known case of an attempted escape by any residents of the center involved 3 minor youths who were at all times free to leave through the front gate, but who found it more exciting to leave by way of a canal running under a fence which was guarded by an armed sentry.

Under the conditions of such an abnormal community existence, the residents became more and more confused in their thinking and their sense of values became so distraught and degenerated that [196] they lost all concept of the realities of life. The resentment of many against evacuation and detention became transformed into a zeal

for repatriation or expatriation to Japan. It is my opinion that this zeal for return to Japan was a cumulation of an escape phobia. They regarded themselves as victims of racial discrimination whose only ultimate place of refuge was Japan where they would not be constantly reminded of the fact that "a Jap, is a Jap." This expression grew out of the statement "Once a Jap, always a Jap" which the residents attributed to General DeWitt and resented very bitterly.

As nearly as I was able to determine from personal interviews and investigations there were approximately 600 male adult evacuee center residents who had been either honorably discharged from the United States Army or transferred to the Reserves and released from military duty in February 1942. The certificates of honorable discharge gave as the reason for discharge "for the convenience of the Government." Many of these ex-servicemen stated to me that they resented their discharge very bitterly. They explained to me how they had pleaded in vain with their commanding officers for the opportunity to fight for the country of their birth and of which they were citizens and the only country to which they owed loyalty, the United States. They related with intense bitterness the humiliation of distrust implied by their certificate of honorable discharge with the inscription, I quote again, "For the convenience of the Government," and they told me how from a month to three months after returning to their homes they and their families were evacuated and herded into detention within assembly centers and later transferred to detention within relocation centers and how they were angered when they were then again ordered to register for Selective Service. One extremely bitter such ex-serviceman stated to me that he

told his commanding officer, "I know why I'm discharged. It's because I'm a Jap. Well, why don't you [197] discharge the Germans and the Italians, too? This is just as much my country as it is theirs, and if you don't let us fight for it and if you wouldn't let the Germans and Italians fight for our country, or the Irish, or some other nationality, who would there be to fight for this country?"

These resentful, discharged soldiers in voicing their resentments undoubtedly helped crystallize the belief among a great many of the other camp residents that they would never again be acceptable to our Government or our people.

This was the background for the growth and development of a militant, fanatical Japanese nationalistic movement within the camp that caused the unforeseen and unexpected stampede among the citizen residents to renounce their citizenship.

It was a matter of common knowledge to those who had the opportunity of observing at first hand the reactions and emotions of the evacuees in the Tule Lake Relocation Center that the resentful bitterness caused by the evacuation and the several years of detention, gradually changed into an emotion of pessimistic resignation to the fact that they were *persona non grata* to the American public and to the United States Government. Furthermore, most of the camp residents had lost their homes and their friends, and had been forced to liquidate, give away, or abandon, their farm equipment, merchandise and such other valuables and personal property as they had. Through no fault of their own even before evacuation they had been discriminated against because of their race and had been generally ostricized from the Caucasian society. Neither were they

allowed to enjoy political freedom in their pre-evacuation home communities for the aliens were not permitted to become citizens and the citizens were nearly all youngsters under the voting age. Since they were not afforded the opportunity of developing strong social ties within our peace-time society, and since they [198] did not enjoy political freedom and equality, they worked frugally and energetically to attain economic security for themselves and particularly for their children whom they hoped to see grow up to adulthood with the benefits of the highest attainable education and the full right of United States citizenship. Evacuation, therefore, in addition to subjecting them to the bitter and cruel outburst of racial discrimination also had the effect of severing the only strong roots which they were permitted to develop, namely; their economic roots. Having lost practically all economic security and having no social, political and economic hope for the future in this country, their thinking naturally turned to finding racial and social refuge and security in Japan the only other land known to them; the land of their ancestors and relatives.

The program of the government following evacuation had the effect of forcing the evacuees to choose between repatriation or expatriation to Japan or accepting the indignations and committing themselves to a future in this country which did not seem to offer them any hope whatsoever.

The purpose of the segregation program was allegedly to segregate the so-called "disloyal" from the loyal. Theoretically, all of the "disloyal" were to have been segregated to the Tule Lake Center, that being the only segregation center established by the War Relocation Authority. As a practical matter, it was necessary to resort to arbitrary

tests and standards having no legal or scientific basis in making a determination as to which of the evacuees were loyal and which were disloyal. The evacuee residents of the various relocation camps were classified as disloyal for the purpose of segregation primarily on the basis of either or both of these grounds: (1) If they answered the so-called "loyalty" question in the campwide registration questionnaire negatively or (2) If they had applied for repatriation or expatriation to Japan and had not cancelled such application before [199] the segregation census was taken. In addition to those classified as disloyal were permitted to voluntarily accompany the so-called disloyal members to the segregation centers. Furthermore, at the original Tule Lake Relocation Center a substantial percentage of the population which could not be classified as "disloyal" under the tests refused to move to other centers and in order to qualify themselves for continued residence at Tule Lake after it would become a segregation center, deliberately changed their answers to the so-called loyalty question from "Yes" to "no", or filed applications for repatriation or expatriation to Japan.

One of the consequences of the segregation program was the transferring to Tule Lake of most or nearly all of the disciplinary and administrative "problem children" from all of the other relocation centers thus greatly adding to the confusion and abnormality of the Tule Lake community. Among these were the alleged pro-Japanese agitators and leaders, some of whom imposed their authority and leadership upon a substantial portion of the bewildered and confused population.

The struggle for power and control among the would-be leaders was in general disregarded by the authorities as long as it did not interfere with the ordinary problems

of administration. There developed a strong compulsion among the evacuees to cling to the imaginary security within the barbed wire enclosure, and a consuming fear of possibly being compelled to another and more abhorrent readjustment into a community on the outside which they deemed hostile and dangerous. This fact is significant because it compelled the people to do a great many things to reassure themselves that they would not be eligible for release which meant to them eviction from the security of the camp. That, in turn, made it appear to many who were not aware of these confusing and conflicting emotions, that these people were affirming and reaffirming their loyalty to Japan and, therefore, affirmatively demonstrating [200] their disloyalty to the United States.

The November 1943 incident at the Tule Lake camp which Mr. Burling states was the principal cause for the enactment of the sub-section (i) of Section 401 of the Nationality Code resulted in a period of martial law and confinement within a stockade of some of the stronger and least fanatical community leaders.

As a result of the confusion and unrest which came about from a mass reshuffling of evacuees under the segregation program, a group quickly formed at the Tule Lake Segregation Center, calling themselves the true Japanese. This group took the position that Tule Lake was no place for loyal Americans or persons whom they termed "fence sitters." They circulated a petition which they called the petition for resegregation, and at the same time conducted an intense and bitter campaign for the expulsion from the segregation center of all persons whom

they deemed either loyal Americans or "fence sitters." Many people signed the resegregation petition solely in self-defense.

While the milder leaders were confined in the stockade, a man who was later identified as the principal organizer and leader of a developing under-cover strong-arm Japanese nationalistic movement, proceeded to take over leadership of the resegregation movement. This man had unusual ability in organizational strategy and in many tactics which can be identified only as similar to those employed by the Fascists and Nazis. He used the techniques of spell-binding oratory, of telling gross lies and of spreading rumors for the purpose of whipping up fear, hysteria, and mass obedience to his program and to himself. He seemed to have a fanatical zeal to whip the mass of people into a single controllable unit which he hoped to lead to Japan through an exchange of nationals via the exchange vessel the "Gripsholm." It is noteworthy that this man served in the United States Army during World War I and that he was a member of the American [201] Legion. He had gained fame as an organizer of the Fisherman's Union and as a lobbyist before the California State Legislature in connection with legislation relating to fishermen's rights. I am informed that this man had been reported to the Japanese Government as a leftist and possibly a Communist. I also learned that after he had firmly resolved to expatriate to Japan he embarked upon a course of action which would help him in overcoming the stigma of having served in the United States Army and having otherwise established for himself a record which might be repugnant to the authorities in Japan by proving to the authorities in Japan that he was loyal to Japan.

There were many cases of assaults that occurred during a period of several months before Mr. Burling arrived first at the Tule Lake Center in early December, 1944 and a number of assaults which occurred subsequent to his arrival, and during the entire period of the renunciation hearing program in January, February and March of 1945. It is quite possible that the administrative staff of the War Relocation Authority both at the Center and in Washington, including the affiant, at the time underestimated or misunderstood the significance of those acts of violence in their relation to the renunciation program, and perhaps overemphasis was placed upon other factors, such as mere confusion and mass hysteria, as being the principal contributing factors in causing the flood of renunciations.

A specific case of assault and violence which we did not relate to the renunciation program at the time it occurred but which subsequently we were able to definitely establish had such a relationship, was the serious knifing of a young man about 21 years of age by an Issei about 50 years old. A very thorough investigation of that knifing was conducted by the Internal Security Department and by the offices of the District Attorney and Sheriff of Modoc County, California. The victim and some [202] four youthful eye witnesses would not relate the full facts of the occurrence and at the time denied that there was any issue of camp politics or loyalty involved in the incident. Charles Lederer, the District Attorney, expressed the opinion that the victim and witnesses had been intimidated not to testify against the assailant. The charge against the attacker, of necessity, was reduced from assault with a deadly weapon to simple assault and the assailant was sentenced to a short term in the county jail

on a plea of guilty to the lesser charge. After he was sentenced and committed to jail, the victim and the four youthful eye witnesses as well as many residents in the general vicinity where the assault occurred petitioned and pleaded that the attacker be released from jail. Investigation revealed that coercion and intimidation was being exerted upon those people to aid in securing his release. However, it was not possible to learn the identity of any of the coercers and intimidators nor was it possible to learn the exact issues involved in that case. Don Sanborn, Senior Internal Security Officer in charge of the Colonial Peace officers, later stated that he had determined with reasonable certainty that the assailant was one of the most feared strong-arm men and one of the unofficial leaders of the Sokuji Kikoku Hoshi Dan. Mr. Sanborn requested that that man not be returned to camp from the Modoc County Jail, but if at all possible that he be transferred directly to an internment camp. Mr. Burling's staff was informed of that case and was requested to transfer the man to an internment camp upon completion of his sentence at the Modoc County jail. However, even though his status was that of an enemy alien, we were told that no recommendation could be made to the Attorney General for the internment of that man solely on the basis of our information and that only those who themselves told a Department of Justice hearing officer of loyalty to Japan or membership in a pro-Japanese organization would be interned. [203] As a consequence, the man was returned to the camp after serving his short sentence in the Modoc County Jail. After his return to the camp the Internal Security Officers reported that the assailant was said to be engaged in coercing and intimidating many families and individuals to renounce their

citizenship. The victim of the assault and his four friends were among those who renounced their citizenship. When I learned of the renunciation, I questioned these boys personally from time to time in an effort to learn the identity of other alleged terrorists, but found these boys frightened and unwilling to give me any information or even to discuss their personal experience with the assailant nor were they willing to discuss rumors regarding pressure and threats of violence exerted against them or other renunciants. I am informed that the victim of that man's assault and the four boys who witnesses the assault subsequently wrote letters to the Attorney General of the United States requesting cancellation of their renunciation of citizenship telling for the first time the full facts concerning the knifing incident and the subsequent intimidation and threats of physical violence which compelled them to renounce their citizenship.

On December 6, 1944, Mr. John L. Burling, Special Assistant to the Attorney General arrived at the Tule Lake Center and commenced hearings for Center residents who had applied to the Attorney General for renunciation of citizenship. Apparently the Department of Justice and the Authority had an advance understanding that the more troublesome and uncontrollable Center residents, whose identity Mr. Burling would determine on the basis of the hearings and information he secured from the W. R. A. Administration, would be removed to Department of Justice Internment Camps. Inasmuch as the Justice Department would take only enemy aliens,

Mr. Burling was concerned solely with troublemakers falling in the following three categories: [204]

1. Internees paroled to the Tule Lake Center;
2. Issei (original aliens); and
3. Renunciants (Citizens who renounced their citizenship and whose renunciation the Attorney General approved).

It was undoubtedly the intent of both the Authority and the Justice Department that removing the known leaders and more obstreperous members of the Japanese nationalistic groups would release the Center population from coercion and intimidation, thereby enabling the remaining people to make their own free decisions concerning repatriation or relocation. This was probably in anticipation of General Pratt's lifting of the Mass Exclusion Order. Unfortunately, the timing of the Justice Department's renunciation hearings and removals proved extremely ill timed from the standpoint of helping to free the residents from domination and terrorism at the hands of pro-Japanese leaders. Rumors of the impending lifting of the Mass Exclusion Order had apparently reached the Center residents and they were overcome by a sense of nervous tension, distrust, insecurity and a general state of fear. In December, 1944, immediately preceding the lifting of the Mass Exclusion Order, and during Mr. Burling's first series of hearings, the power of the Sokuji Kikoku Hoshi Dan and the Hokoku Seinen Dan was at its lowest state and it then seemed that these organizations would fade into utter insignificance. How-

ever, the Center residents were upset and confused by reason of the following three successive events:

- (1) The renunciation hearings from December 6 to 14, 1944.
- (2) The announcement of the lifting of the Mass Exclusion Order on December 18, 1944; and
- (3) The spectacular apprehension and removal to internment camps by the Department of Justice on December 27, 1944 of some seventy leaders of the Hoshi Dan and Seinen Dan.

As a consequence, the terrorists and propagandists gained a [205] stronger foothold than ever for their pro-Japanese organizations. The hush-hush which preceded these three events lead to general community fear of imaginary horrors, and the remaining leaders of the Hoshi-Seinan Dan immediately took advantage of that condition by embarking upon an intensive membership drive. They knew the people's fears of relocation, and fanned those fears into an hysterical pitch by spreading false rumors faster and more effectively than the Administration could refute and counteract.

It was the consensus of opinion among the members of the Administrative Staff, as well as among the more sober, intelligent and responsible evacuee residents, that the holding of renunciation hearings at the Tule Lake Center during January, February and March of 1945 was a most serious mistake. Without their first having been psychologically prepared for it, the Center residents were tragically confused and terrified by the sudden lifting of the Mass Exclusion Order, and as a consequence they were easily stampeded into believing the propagandists and terrorists that renunciation of membership was the only security they had against separation of citizen

members from alien members and the immediate drafting into the American Armed Forces of citizens males over the age of eighteen years. This latter rumor seemed to the residents to have been substantiated by the fact that although the renunciation Act did not specify an age minimum, Mr. Burling, while at the Center, announced that only citizens who had passed their eighteenth birthday would be permitted to apply for renunciation of their citizenship. The Department of Justice also played into the hands of the propagandists and terrorists by concentrating on the members of the Sokuji Kikoku Hoshi Dan, Hokoku Seinen Dan, and Hokoku Joshi Seinen Dan, thus leading credence to assertions of the leaders of those organizations that renunciation could only be secured by membership in such organizations. Once this mistaken notion took hold, all efforts on the part of the Administration [206] to discredit it were in vain, and incalculable harm resulted. Other factors which added to the state of confusion and fear were:

- (1) The sensationalized newspaper stories concerning terrorism against evacuees who returned to the West Coast.

- (2) The lack of information concerning the individual exclusion orders which were being served by the Western Defense Command Process Servers, and particularly the meaning and significance of the question "Have you applied for renunciation of your citizenship?" which was asked by the Process Servers of each excludee simultaneously with the service upon him of the Individual Exclusion Order. (This question let the residents to imagine that the government had a scheme in mind to trick them in the same way as they thought they had been tricked in the loyalty questionnaire.

That the stampede to renounce did not occur until after December 18 is substantiated by the fact that at the outset the comparatively small group of extremists and fanatics were the only ones who showed a desire to renounce their citizenship, but by the time the program ended more than 80% of all the citizens eligible to renounce went through the renunciation procedure. Even Mr. Burling was alarmed by the unexpected deluge of applications. However, he believed that the W. R. A. administration was to blame for the stampede arguing that the Center residents had been frightened by the W. R. A. announcement that all centers except Tule Lake would close by the end of 1945 and that in order to avoid the consequences of Center closing they sought war duration camps security by renouncing. The announcement that all relocation Centers except Tule Lake would be closed by the end of 1945 may have been a minor contributing factor to the renunciation stampede, but without a doubt the principal causes of the stampede were the choice of time and place at which the hearings were held, and the unrealistic attitude of many Government officials in regarding [207] the fanatical demonstrations of the Japanese nationalistic groups and the failure of the renunciation applicants to heed the admonitions of the Government officials, as conclusive proof that the renunciations were motivated solely by patriotic adherence to the Japanese Government. As stated elsewhere in this affidavit, the demonstrations and the stampede to renounce citizenship were, in the opinion of this affiant and in the opinion of many other Government officials and their observers of a hysterical nature and not based upon a conscious and free choice of loyalties. Unfortunately this opinion was neither shared nor given consideration by those who determined the time, place and procedure for holding the renunciation hearings.

The opinion expressed in the preceding paragraph was, in a measure later confirmed by many renunciants and by citizens who survived the mass political suicide psychosis. One of the most intelligent young men in the camp who was among the twenty per centum of the citizens who survived, said to me after the renunciation program ceased as he pointed to an equally intelligent, and I have no doubt, equally loyal young man, "There go I but for the grace of God, and for my very close contact with you and other members of the staff because of being employed in the Administrative area."

Towards the end of the renunciation hearing program, some of the renunciants began to come out of their psychotic state and called at my office for advice as to what steps they should take to cancel their renunciation. After the hearings closed and the hearing officers departed for Washington, D. C., my office was deluged with inquiries from renunciants who wanted to "renounce their renunciation of citizenship." All inquiries were referred to the Alien Enemy Control Unit of the Department of Justice in Washington, D. C. It is my understanding that a very substantial number of the renunciants wrote to Washington, D. C., requesting cancellation of their renunciation, and that a sizeable number even sent telegrams [208] to the Director of the Alien Enemy Control Unit stating their desire to cancel their renunciation after hearing unofficial reports that all renunciants would be deported to Japan.

LOUIS M. NOYES

Subscribed and sworn to before me this 11th day of August, 1947.

(Seal)

FRANK F. CHUMAN

Notary Public in and for the said County and State.

My Commission expires Mar. 28, 1950. [209]

AFFIDAVIT

State of California

County of Alameda—ss.

Robert H. Ross being duly sworn, deposes and says, as follows:

From October 16, 1944 to March 31, 1946, I was employed by the U. S. Department of the Interior, War Relocation Authority Segregation Center at Tule Lake, Modoc County, State of California. My official title was: Assistant Reports Officer, however, my duties included acting as the official administrative interpreter and as a liaison officer between the administrative personnel and the evacuees living in the center. As I was born and reared in Japan, being the son of an American missionary family, and as I have spent a total of eighteen years in Japan, I feel that I have a mastery of the spoken Japanese language.

Prior to my going to the W. R. A. Tule Lake Center, I had been an instructor of Japanese language at the U. S., Navy Oriental Language School at the University of Colorado, Boulder, Colorado, for a period of twenty-six months. My most recent trip to Japan was for a period of three years—from September 1938 to September 1941. By profession I am a college teacher in the field of the social sciences; I have an M.A., Degree in Sociology from the University of Southern California. At present I am teaching at the San Mateo Junior College, San Mateo, California.

The above personal background has been set down solely as evidence as to my qualifications for making the following observations concerning the situation obtaining at Tule Lake Center during the seventeen and a half

months during which time I was employed there as one of the administrative personnel. It was during these months that the renunciation hearings, mitigation hearings—both conducted by the Department of Justice—and other events which had a bearing upon the renunciations of United States citizenship in general, took place at Tule Lake Center. [210]

As official interpreter, I was present and participated in the following types of activities: Renunciation of citizenship hearings, which took place from December, 1944 until almost half way into the year 1945; trials, both criminal and political, held on the project and off the project at the Modoc County Superior Court—the political trials almost always involved leaders of the pro-Japanese patriotic organizations known as the Hoshi-dan (parent group) and Hokoku-dan (young men's organization); interviews and meetings in the company of the project attorney, Louis M. Noyes, the two assistant project directors, Harry L. Black and Martin P. Gunderson and others at which times certain evacuees—individually and in groups—were interrogated on certain issues related to the various center problems; meetings of the block managers organization which functioned as a central local administrative body within the colony; and mass meetings between administrative personnel and large groups of disloyal Japanese evacuees of both the first and second generation. On many occasions I visited here and there in the center, talking to evacuees of all types, ages and affiliations. Many of these conversations were carried on in the Japanese language.

One of my strongest convictions is as follows: There were many, many splendid American born young men and women of Japanese ancestry in the Tule Lake Center

who would not have renounced their United States Citizenship had it not been for the community mass hysteria which had been produced within the confines of the man-proof, barbed wire enclosure over a period sometimes extending over two to three years and which had insidiously penetrated the minds of these impressionable young men and women to such an extent that they had lost the ability to think logically and even rationally. These people could not think clearly because they were obsessed by fears—fear arising from intimidation, pressure and rumors; fear of bodily injury either to themselves or to their loved ones.

When one stops and considers the make-up of the human mind [211] and mental processes, one is forced to admit that there is only a very thin line marking the division between normal sanity and borderline mental neurosis or psychosis. In other words, it is hard to judge whether one is mentally normal or slightly neurotic. Under the environmental influences found to be prevalent at Tule Lake Center, it is quite natural for the impressionable minds of young men and women who were, in many instances, only in their later teens, to become slightly "off center" as it were. It was easy for these young people to lose their mental equilibrium in such a topsy-turvey world as the one in which they had been forcibly detained.

Many of these young renunciants of whom I speak had spent their sixteen and seventeenth years inside a barbed-wire enclosure, rubbing elbows at close range with the same people day after day, month after month. Rumors were rampant; started and spread by members

of the pro-Japan patriotic organizations mentioned above. There were even strong-armed gangs of fanatical young men going about at night, intimidating, threatening, attacking, beating and even threats of murder. The local evacuee "police" force within the colony were themselves afraid to take sides in political issues or to interfere in the activities of the "goose-stepping, bugle blowing, shouting, hoodlums" who so proudly called themselves "Sons of Nippon."

Pressure groups of these young, show-off hot-heads—fanatical scapegoats doing the "acting" while behind the scenes, "agitators," the undercover "brains," pulled the strings—made it impossible for loyal Japanese-American citizens to live peacefully with any degree of personal security or safety. (The "behind the scenes" men are termed, "advisors and strategists who were much more powerful than the known leaders and members of the disloyal organizations" according to Louis M. Noyes, former project attorney at Tule Lake. I quite agree with him in this matter.) The only way in which these loyal citizens could appease their tormentors was by renouncing their U. S. citizenship. [212]

The Hoshi-dan and the Hokoku-dan took advantage of every opportunity to misinterpret and garble the information circulated in the colony by both the Department of Justice and W. R. A. authorities. Reports from the outside press which told of the bitterness of West Coast residents toward the returning evacuees after the Army had rescinded the West Coast ban on people of Japanese

descent were played up to further frighten and misguide the residents of the center. Reports that evacuees were to be forced to leave the camp unless they renounced their citizenship were spread in the camp by these disloyal groups. All of this only added to the already confused atmosphere making the "pressure" all the more unbearable. Under this continuous psychological "war of nerves" even those who had tenaciously held on to their U. S. citizenship, finally, in sheer, final desperation were forced to report for their renunciation hearings.

The hearings were proceeding day after day during this period. Special transportation was made available to all who wished to renounce. The way was made easy. Like a mill, grinding on and on, the renunciation proceedings continued. The hearings often took only a few minutes. Many to whom I talked afterwards told me that it was not until after their hearings were over and they had returned to their barracks that they fully realized for the first time just what they had done. These people disavowed their U. S. citizenship on grounds far removed from any criterion of political allegiance.

In January, 1946, I did a good deal of the interpreting at the time of the mitigation hearings which were rehearings of certain renunciants who wished to remain in this country. At this time these people, most of whom were "stateless" persons, were given a chance to "show cause" why they should not be "removed to Japan." Many sad stories were told and many long, detailed notes were taken down by the Department of Justice stenog-

raphers which I [213] am certain would bear out my contention, as above stated, that a sizable number of those who renounced their citizenship did so with no feelings of disloyalty to this, their native country, but did so merely because they were victims of circumstances beyond their control, victims of the mass hysteria which swept the whole community. A heavy mist lay over the camp blotting out reality and rational thinking. These people really didn't know what was going on in the world at large. Radio broadcasts during the war had been interpreted to them by members of the disloyal groups as pure "propaganda." The newspapers carried conflicting stories. Statements by various government officials were confusing and often, to them at least, were inconsistent.

Living apart from the rest of the world for a period of from two to three years in such an environment as obtained at the Tule Lake Center from early in 1942 to the twentieth of March, 1946, would be more than many a strong minded person could bear without something happening to his mental outlook, regardless of race, color or creed. Tule Lake Center was the psychopathic ward of the War Relocation Authority.

Once removed from this camp and allowed to return to take up their places in the outside world's affairs brought these people again into the world of reality. Proper adjustments can be made by people who have been under severe mental strain once the causes of this strain are removed. These American born Japanese are

no exception. The readjustment problems are great and because these people now have no citizenship in any country their problems are just that much greater. It seems to me that worthy members of this group of renunciants—considered on the basis of individual merit—should be given back their United States citizenship.

May I call attention to a new book which has just been released by the University of California Press bearing the title: *The Spoilage*, by Dorothy S. Thomas and Richard Nishimoto. This book [214] is a sociological study made of the evacuation and resettlement problems of the Japanese Americans. The chapter headings in this book are as follows: "Evacuation, Detention, Registrations, Segregation, Revolt, Supression, Accommodation, Underground, Interlude, Informers, Incarceration, Resegregation, and Renunciation."

I submit the above statements after careful thought and with the appeal that this question before the court be considered carefully from every possible point of view before judgment is pronounced.

ROBERT H. ROSS,
16130 Via Alamitos,
San Lorenzo, California.

Subscribed and sworn to before me this 12 day of Dec., 1946.

ALYCE MAE STURGUS
Notary Public

My commission expires Apr. 6, 194..... [215]

[Title of District Court and Cause]

AFFIDAVIT OF HARRY L. BLACK

State of California

County of Merced—ss.

The affiant, Harry L. Black, whose permanent residence is 335 North Kenwood Street, Burbank, California, deposes and makes the following statement:

I was employed by agencies of the United States Government in duties related to the evacuation of persons of Japanese ancestry from the West Coast as follows:

From April 4, 1942, to May 25, 1942, as Assistant Manager of the Manzanar Assembly Center of the War-time Civil Control Administration at Manzanar, California. This period of employment extended from virtually the opening date of the Center until its transfer to the War Relocation Authority as one of its ten relocation centers.

From May 25, 1942, to November 1, 1942, as Center Manager of the Wartime Civil Control Administration assembly center at [216] Merced, California. This period of employment extended from some three weeks after the opening of the center until it was closed by the transfer of its entire population of Japanese ancestry to the relocation center of the War Relocation Authority at Granada, Colorado.

From September 13, 1943, to May 4, 1946, as Assistant Project Director of the Tule Lake Center of the War Relocation Authority at Tule Lake, Modoc County, California. This period of employment extended from the date of the first train movement of the segregation program to the close of the Center.

From the date of my entrance on duty at Tule Lake until November 1, 1944, I served as Assistant Project Director in charge of the Division of Community Management, which included such activities as Health, Welfare, Education, Internal Security, Community Activities, Business Enterprises and Community Analysis. From November 1, 1944, until the closing date of the Center, May 4, 1946, I served as Assistant Project Director in charge of the Division of Administrative Management which included such activities as Finance, Supply, Procurement, Property Management, Mess Operations, Evacuee Property, Statistics, Office Services, and Personnel. My duties during this time also included those of Project Hearing Officer, to hear and act on disciplinary cases in accordance with War Relocation Authority regulations. I also served as Acting Project Director in the absence of Mr. Best.

The above abstract of my employment is given to indicate the opportunity which I have had to become familiar with the whole program of the evacuation of persons of Japanese ancestry from the West Coast and with the complexities of administration presented in the operation of Tule Lake Center. Aside from being one of the largest centers under the jurisdiction of the War Relocation Authority, Tule Lake became a particular consideration for the W. R. A. when it was designated as the "Segregation Center," into [217] which would be assembled all the residents of all centers who were determined to be either loyal to Japan or of questionable loyalty to the United States.

I was not employed by the War Relocation Authority at the time preparations were being made for the segregation program, and particularly during the time when

determinations were being made in Tule Lake as to what residents would be transferred to other centers for ultimate relocation as being "loyal" to the United States; or as to what residents of other centers would be transferred to Tule Lake Center as being "loyal" to Japan. I do know that these determinations were made almost exclusively on the basis of "registration" in which process all residents of all centers, with the exception of minor children, were required to submit registration forms, the same as for Selective Service, and in which they were required to give answers to two questions which related to their loyalty to the United States.

I am not prepared to say whether or not this procedure for making the determination of what individuals and families should be gathered for segregation at Tule Lake and what individuals should become (or remain) residents of other centers was the best that could be devised. However, it must be remembered that under the pressure of public opinion, under the "yammering" of certain elements of the public press, and under the bedevilment of prominent officials, committees, and agencies of the government itself, the War Relocation Authority had to do a sorting job which affected some 110,000 residents of ten relocation centers within an inconscionably short space of time, and under a procedure so hurried, so inconsiderate of human exigencies, and so complicated by relationships with other government agencies, that no responsible official of the War Relocation Authority itself would maintain that a good job had been done. The utmost claim that could be made would be to the effect that it was the [218] best job that could be done under the circumstances. One can fearlessly challenge any other group, organization or agency to do a better job.

The inadequacy of the procedure can be simply illustrated. On the basis of the selection standards, of a total presegregation population of approximately 13,000 at Tule Lake, only 6,250 individuals and family members chose to go to some other center for ultimate relocation, while the remaining number of almost 7,000 chose to remain at Tule Lake and be regarded as "loyal" to Japan. On the basis of the same selection standards, only 131 individuals and family members among the pre-segregation population of 7,000 of the Granada (Colorado) Relocation Center chose to come to Tule Lake as segregants. In terms of percentage the same selective process found approximately 51.9% disloyal to the United States at Tule Lake, and only 1.8% at Granada.

The only justifiable conclusion is that factors other than the sole question of "loyalty" either to the United States or Japan were the motivating considerations when the residents were confronted with the necessity of giving some answer to the loyalty questions on the registration questionnaire. The most significant was that in general evacuees did not wish to move, and particularly residents of Tule Lake did not wish to be moved to any other relocation center, especially outside the state of California. Some other considerations, generally applicable to all centers are set forth with clarity in Mr. Burling's affidavit. There was an understandable anxiety on the part of some Issei to return to the homeland; the anxiety of adult children, either Nisei or Kibei, to maintain their family unity and not be separated from their parents; the fear of the Selective Service draft both on the part of eligibles and their family members; the dominance of the parents over their children; the feeling of failure and frustration over the loss of property and assets

representing a [219] lifetime of labor and saving through evacuation from pre-war homes; discrimination against the Japanese as compared to the treatment of residents of other enemy nationalities; the hopelessness of facing the necessity of starting again from scratch to make a living in a perhaps hostile community outside the West Coast zone where most had previously made their homes; the frustration and depression induced by living abnormal, regimented lives in an abnormal, regimented government center; the crowded, dismal barracks; the unpalatable food of the messhalls; the lack of privacy in the community lavatories and laundry rooms; the "concentration camp" atmosphere of the daily routine; and the feeling that the "rights of man" as applied to other citizens and other aliens did not apply to them.

Whatever else may be said, it is certain that the segregation program did bring together at Tule Lake, along with those who honestly felt an allegiance to Japan and to the Japanese Emperor, virtually all the trouble-makers, the malcontents, the factious, the rebellious and frustrated, the draft-dodgers, the fanatics, the social misfits, the professional "organizers," the petty "politicians" and "political" leaders, and their gangs of "goons" and "strong-arm" boys. To Tule Lake came the worst elements of all the other centers.

It should be helpful to understand the effect upon residents of the Japanese centers of the endless requirement of answering questions and filling out questionnaires. From the first registration required by General DeWitt under the terms of the evacuation order, the residents of the reception centers, the assembly centers, and finally the relocation centers were constantly beset with the necessity of providing—not once, but time and again—

information about themselves and their family members. The Army, the Department of Justice, the Wartime Civil Control Administration and the War Relocation Authority were only [220] the most important of the agencies which had to compile a mass of records and statistics. In the course of supplying all of this information, it would seem that most of the individuals and family heads were almost "questionnaired" to death. And in the course of this endless process of amassing records by questionnaires and interviews, it would be only natural for many a well-intentioned resident to arrive at the conclusion that much of the questioning was irrelevant and whatever answers were given were more or less immaterial. Ultimately, I am sure, many arrived at a point where their answers to questions were neither honest nor sincere. I hold this to be the case with the registration questionnaire. There is no doubt at all in the minds of many responsible former W. R. A. officials that in innumerable cases the failure to give the "Yes—Yes" answer to the loyalty questions was induced by other considerations other than a desire to answer truthfully, honestly and sincerely. The interviewee in instances without number obviously asked himself before answering: "What will happen to me if I say 'Yes'?" "What will happen if I say 'No'?" "What will happen to my family?" "Will I be sent to Arkansas?" "Will I be forced to go to some place I do not like?" "May I be allowed to remain here?" "Can I take my children with me?" And so on ad infinitum until the interviewee learns to get along by giving the "right," or the expedient answer rather than the honest, the true and the sincere answer. There is no doubt also that this philosophy and practice in respect to answering questions carried over in a measure

to interrogations regarding the renunciation of citizenship and the later mitigation hearings.

To add further confusion, the policies, the procedures, the programs and the plans of the governmental agencies, including W. R. A., the Army, and the Department of Justice, changed so frequently that the evacuees rarely knew what they could depend [221] upon. Furthermore the agencies were often not in position to make definite and mutually agreeable plans with the certainty of being able to go ahead and carry them out. For example, Mr. Burling makes an important point of the announcement made by the War Relocation Authority to the effect that its centers would be closed by January 1, 1946; and he dwells upon the effect this announcement had upon the number of applications for the renunciation of citizenship received by the Department of Justice. What Mr. Burling does not reveal is that if the Department of Justice had been willing and able to carry out the program the Director of the War Relocation Authority had reason to believe it would carry out, all of the relocation centers, including Tule Lake, could have been closed not later than January 1, 1946. The relocation program was always ahead of its announced schedule. Center after center closed on time, and some many days in advance of the scheduled date. And in the last days at Tule Lake, the relocation program was so close on the heels of the Department of Justice that it was held up only because the Department of Justice could not decide who it was going to intern and who it was not. And the last relocatable person went out the gate the same night that the last Department of Justice internment train pulled out. Some of the notifications of Department of Justice "releases" came so late that several individuals

were removed from the "internment" train after they had been searched, processed, and put aboard to go to the family internment camp at Crystal City, Texas, or the single men's camp at Santa Fe, New Mexico.

With this degree of wavering and indecision on the part of government agencies which had the responsibility to deal with the handling of evacuation, relocation, segregation, renunciation, mitigation, internment, expatriation, repatriation, it is certainly not difficult to understand how many evacuees got befuddled [222] in their own thinking. There were cases in which the Department of Justice had announced that all aliens of such and such list would be deported. These aliens induced their Nisei family members, sometimes adult and sometimes minors, sometimes by persuasion and sometimes by threats, intimidations, and even violence, to renounce their citizenship so that they could all go to Japan as a family, or at least all could be together whatever happened, only to find that ultimately the Department of Justice would determine that the alien parents would not be deported and that they should be relocated, while the now renunciant offspring would face deportation without their parents.

No one who is at all familiar with the history of Tule Lake Center, particularly subsequent to segregation, would attempt to minimize the turbulence of community life there. Mr. Burling's statement has not overdrawn the facts with respect to the period with which he assumes he be familiar. However, the turbulence extended much farther back. He makes casual and brief reference to some incidents to which major importance should be attached. The arrivals and departures of segregation trains occupied approximately one month before the completion of the first phase of segregation during which

the bulk of the transfers were made. Scarcely had the incoming segregants settled in their newly assigned quarters when there began a scramble for power and leadership within the colony (residential area). Two incoming contingents, one from Central Utah and one from Jerome, Arkansas, arrived with an organization already formed for seizing the political leadership of the colony. This leadership was desirable because it carried a certain influence in the assignment of jobs which were filled by evacuee employees. For instance, the job of block manager was a position of prestige and importance. Jobs in the hospital were desirable because of the privilege of special passes and the privilege of having some meals at the hospital mess. [223] Jobs in the block messhalls were desirable because of easy access to the best servings of food. Jobs in Mess Operations were desirable because of the opportunity to discriminate favorably in behalf of one's own block in the distribution of mess supplies. Jobs in the Motor Pool were desirable, especially if an employee liked to drive a truck or enjoyed riding on one. Jobs in the colonial police were desirable if one liked to be officious or bossy.

Aside from the two contingents which had come prepared to gain community leadership in the colony, there remained a considerable contingent of former Tule Lake residents who felt that they might retain the prerogatives of leadership for themselves. Recognizing at once the conflict of interests involved, the leaders of the three groups got together and decided to consolidate rather than fight one another. In the consolidation, however, it seemed that some ascendancy went to the Jerome group, and it was leaders from Jerome who headed the first anti-administration demonstration on the occasion of Mr. Myers' visit to the Center, November 1, 1943. The

leaders seized upon the occasion of a truck accident in which one evacuee farm worker lost his life to stir up trouble against the administration. They brought about a work stoppage on the farm and tried to initiate a series of bargaining conferences with the administration, the objective of which was to gain administration recognition for their group and to advance their prestige among the residents of the colony.

The climax of this effort came on November 1 when the group caused their henchmen, hand-picked "block representatives," to make a fake "official" announcement in all messhalls at noon that day that Mr. Dillon Myer would make a public address in the administration area at one o'clock. Quite naturally all residents were taken in by the unauthorized announcement, and all who could did come to the administration area to hear Mr. Myer's talk. [224] Newspapers later described this assembly as a "riot." It was far from that. It is true that the leaders' "goons" did round up stragglers from all corners of the colony and they made their best effort to see that the crowd was as large as possible. They even invaded the hospital to bring out workers to add to the size of the assembly. The intention of the leaders was to impress Mr. Myer and other members of the W. R. A. staff that this crowd of "followers" looked to them for leadership. They requested a conference with Mr. Myer. Mr. Myer had expected to meet with representatives groups from the colony and he saw no reason why he should not meet with the present group. So for two hours or more he conferred with the group in the office of the Project Director while the assembly of "followers" outside stood wearily and patiently waiting for the promised address from Mr. Myer. There were old men leaning on canes;

tired women with young children hanging to their skirts; young boys and girls wondering why they had to stay there instead of going home. There was no disorder in the crowd—none at all except at the hospital where the W. R. A. Medical Officer had been assaulted because he physically opposed the “goons” who invaded the hospital outside of visiting hours to get more workers to join the crowd outside.

The proceedings of the meeting with Mr. Myer are a matter of W. R. A. record. Mr. Myer declined to recognize the present group as the exclusive representatives of the population of the colony. He declined to entertain their “demands,” but said that he would be glad to have their suggestions and recommendations for better colony administration, and concluded by saying that he had the utmost confidence in the Project Director and that he would refer to him their suggestions and recommendations for whatever action he saw fit. Mr. Myer included the same comment in his remarks to the assembled residents after the meeting was over. [225]

Following the “hoax” calling of a mass meeting in the administration area, an order was published forbidding the assembly of unauthorized groups in the administration area. This order was violated the evening of November 4 when a group of about 50 young men did assemble in the administration area and attempted to interfere with trucks and drivers from the Motor Pool who were at work moving some commissary supplies from the warehouses to the farm for the use of a special crew which had been brought in from other centers to complete the harvest which the colony work stoppage had halted.

Members of the Internal Security (then only seven in number, and unarmed) attempted to send the group back

to the colony where they belonged. This attempt resulted in an encounter in which one Internal Security Officer and several evacuees were hurt. It was during this encounter that Mr. Best called Colonel Austin, of the Military Police, and asked him to come in and take charge in accordance with the Standard Operating Procedure between the W. R. A. and the Army. (It is noted that Mr. Burling's statement, by indirection, indicates that Mr. Best called the Military Police because he thought he himself was about to be attacked. This is only one of several instances in Mr. Burling's statement where he gives an erroneous impression by indirection.)

The Army control of the Center continued from November 4 until January 24. During that time a large number of arrests and apprehensions were made by the Army. Those arrested were placed under guard in a stockade, and later the stockade was enlarged to care for the larger number who were picked up and held by the Military Police. Additional man-proof fences were put up between the residential area and the hospital and between the hospital and the administration area. A larger Internal Security force was employed and the Officers provided with arms and patrol cars.

When these precautionary and security measures were [226] arranged, the Military Police turned the administration of the Center back to the W. R. A. on January 24. But they still held about 375 prisoners in the stockade, including all of the members of the self-constituted "Negotiating Committee" which engineered the meeting with Mr. Myer. Within a few days the administration also fell heir to the prisoners and had the task of screening and releasing the detainees from time to time as the attitude of the detainees themselves and the temper of the

colony warranted the release. It was June before the entire stockade group was released. By that time the influence of the leaders was dissipated, and their return to the colony caused scarcely a ripple of interest.

During all of this time the entire colony seethed with unrest. It was mainly a struggle between the fanatical and strongly pro-Japanese element which had given their support to the "Negotiating Committee" and a combination of elements made up of more conservative groups who felt that more could be gained by working with the administration than by demonstrating an attitude of conflict and antagonism. The friction between the groups was enduring and bitter, and resulted in numerous beatings and still more numerous threats of violence. The conservatives were generally on the defensive. They were not organized for fighting, had little resort to measures of violence except for self-protection in case of attack. They looked to the administrative officials for protection, and didn't always get it.

It should be pointed out, incidentally, that the War Relocation Authority was not a law-enforcing agency. The Center and its population were subject to the laws of local governmental agencies. We maintained a working relationship with the District Attorney of Modoc County and cases of importance were referred to him. On the other hand, the Project Director was delegated certain authority and responsibility for the maintenance of peace [227] and good order through the use of the Internal Security Force and the W. R. A. hearing procedure.

Through the Chief of Internal Security, the Project Director endeavored to get the colony to assume the responsibility of policing their own area by the employment

of a colonial police force of some 200 selected evacuees trained by the Internal Security officers and working under their supervision. However, the plan was not too successful because members of the colonial police department were just as susceptible to threats, intimidations and assaults as any other resident, and it was never possible to get the colonial police to take a stand or enforce rules and regulations in the face of "goon" squad threats, even though they might have had the passive approval and backing of the great majority of the loosely organized or entirely unorganized body of colony residents. The result was that any disorderly group or gang, such as the Wakayama gang, could throw the whole colonial police department into a complete paralysis. The membership of these gangs were well known, and no colonial police officer would place himself in the position of antagonism to a gang member. If, by the conscientious performance of duty, a colonial policeman should perhaps incur the favorite epithet of "inu" ("dog" or "informer") from one of the several gangs, the normal result would be for the policeman to resign, go into hiding, and thereafter make himself as inconspicuous as possible.

The next event which the trouble-makers seized upon to solidify their position was the murder of the general manager of the Business Enterprises, the evacuee cooperative organization which operated the monopoly business of providing commodities and services to the residents of the colony. Mr. Burling mentioned this incident. The murder was never solved. The motive is not officially known. It could have been a matter of private [228] revenge as indicated by Mr. Burling. It could have been the result of a family quarrel over business matters. Also it could have been because of the victim's prominence in the co-

operative organization and because of the organization's attitude of cooperation with the administration. It could have been because the general manager rebuffed a shake-down by followers of the "Negotiating Committee" when he refused a demand to supply without charge commodities from the store's stock to detainees in the stockade.

It doesn't particularly matter in the present instance what the motive was or who the murderer was. What does matter is that it set a pattern of violence over and above the ordinary beatings which took place from time to time, over and above the daily threats and intimidations which the organized minority used to dominate the unorganized majority. If Hitomi could be killed for any reason or for no reason at all, then the same thing could happen to anyone else. Everyone who remained in the colony found it best to see to it that he got along with any and all of the fanatic groups and their representatives. They better do what they are told to do and be quick about it. Furthermore, they better not talk. In all cases, it is best not to appear to be on too friendly terms with anyone in the administration. If the leaders of a fanatic group want a paper signed, then it better be signed; if they want 7,000 names on it, then there better be 7,000 names on it. It is common knowledge that blank petitions were signed by the hundreds by block residents of whole blocks without remonstrance. Hundreds of organization membership applications are known to have been signed without any question because a "shaved-head" shoved one out and said, "Sign here."

In such an atmosphere of terror, it is easy to see what would be the state of mind of many residents who wanted nothing more than to live in peace and security while they must perforce remain in the Center. Literally, hundreds

of older people, men [229] and women, fathers and mothers, joined the subversive societies because they were afraid not to. Likewise, they added their parental admonitions to the threats of fanatics to get their children to join the young men's and the young women's groups because they were afraid to incur the displeasure of the group's leaders. Literally hundreds of young people participated in the morning drills against their will, yet not daring to reveal their reluctance.

When the "Society for the Study of the Fatherland" was first organized in July and August of 1944, with the first meeting held August 8 in the auditorium of the high school, it had every characteristic of a bona fide association for the study of Japanese history and culture. Its leaders were known for their respectable standing in the community and for their cooperative attitude toward the administration. They submitted their constitution and their list of proposed officers to the administration for approval. Inasmuch as it appeared that sooner or later all of these people would make their home in Japan, it was reasonable that those people who had never been there should have some education to prepare them for living in Japan. The administration approved their organization and gave permission for the use of the high school auditorium for their monthly meetings.

Seizing another opportunity here, the subversive minded fanatics of the colony took over this organization, squeezed out the original leadership or shoved them into back seats, "reformed" the objectives of the society and turned it into the subversive and seditious organization that it was when Mr. Burling arrived on the scene. By that time the approval of the administration had been rescinded and the organization was no longer permitted

to make use of administration facilities for their meetings.

The young men's society, the "Hokoku Seinen Dan" was an outgrowth of the parent organization, fostered and developed by [230] the subversive leadership. The already trained "goons" or "strong-arm" boys were the nucleus of the young men's auxiliary. In a high-powered membership drive, and with the use of every kind of deception, intimidation and threat, the membership boomed. Likewise a girls' auxiliary was formed and developed along the same line. Some of the Japanese language schools fell into the hands of the subversive element and they were utilized for the dissemination of anti-American and pro-Japanese propaganda.

We in the administration were aware that these things were happening. We knew that many people, both young and old, were forced to join the subversive organizations against their will. We discussed these developments in staff meetings, and we realized the coercion which had been exercised to get many young men, otherwise and ordinarily known to be thoroughly Americanized, to join the "shaved-heads," and that by exactly the same means, many Americanized girls were coerced into membership in the "pig-tails."

Weekly reports were made by the Project Director concerning these activities to Mr. Myer and his staff in Washington. Similar reports were made by the Project Attorney for the attention of the W. R. A. Solicitor in Washington, with special emphasis given to features and factors which came under his purview. Periodic reports and special studies and analyses were made and submitted to Washington by the Community Analyst (Mr. Op-

ler) dealing with trends of community sentiment, feeling and interest, and dealing with the sway and surge of pressures caused by each new development of administration and each new political move of colony organizations and leaders. It was so utterly patent to us of the staff of the Center at Tule Lake and to the key people of the Washington staff that the practices and tactics of the trouble-making leaders was based on the idea of compelling other people to conform to their own ideas and programs that there was [231] little or no occasion to refer to these compulsions as arising out of coercion. The fanatical leaders gained and kept their followers either by persuasion or coercion. Those who followed by persuasion were of the kind and type of the leaders themselves. They were susceptible to the same feelings and attitudes and were of the material which provided the successive layers of leadership that came to the top as the transfers to internment camps progressed. Those who followed by coercion or compulsion, those who accepted the subversive leadership mainly in order to avoid trouble for themselves and their families, constituted an entirely different segment of the organizations' membership. They joined the groups because they were afraid to resist, and they fell into the pattern of un-American behavior because they felt that their safety, for the time being at least, lay in being on the good side of those who could make it tough on them. There were plenty of examples of how tough things could be made. There were cases of families being so harassed that they were compelled to move out of the block in which they had made their residence, only to find themselves so completely ostracized in their new block that there was no peace of mind for them. There were instances of dismissals and enforced resignations from evacuee jobs. Many times a whole

family was made to feel the pressure by being required to sit apart in the messhall and receive inferior servings of food while they winced under the crooked looks and muttered curses of those who had thus ostracized them. There were those who found their names prominently posted on the doors of the latrine with the threatening warning "You're next!" following an untoward events such as the Hitomi murder.

Since all concerned knew what was taking place, there was no need to make reference to such activities and practices as forms of "coercion"; and if Mr. Burling found little or no reference to terms implying coercion in the reports and records [232] of W. R. A., this is very obviously the reason.

Responsible officials of W. R. A. hold no brief for the hard core of the really voluntary and whole-hearted membership of the pro-Japanese organizations, nor for those non-members whose allegiance unquestionably and by choice rested with Japan. These included a large number of aliens who foresaw no future for themselves and their families but in Japan. They were truly loyal—most of them—to the land of their birth. Their hopes of making a better life for themselves and for their families in this new country had been dashed by the evacuation and by the subsequent treatment they had received at the hands of the country of their adoption. They included also a large number of Kibei, who were, in short, misfits either in Japan or in the United States. This is the group of approximately 2,000 whom Mr. Burling mistakenly describes as Nisei. Although American citizens by birth, they had been sent to Japan for the major portion of their education. Nisei really are first generation children of Japanese alien parents who have received their education in this

country. The Kibei group in this country are not wholly accepted as social equals either by the older Issei or the Nisei. With so little community acceptance in general terms, they found an outlet for their energy and activity by serving as hangers-on, as "goons," as "strong-arm" boys for political leaders who welcomed their assistance; and they also served as leaders of the "taiso" exercises, involving drills, calisthenics, marching and bugle-blowing, all in the fashion of military training.

We never believed that the Kibei group ever hoped or desired to serve in the Japanese Army. The records show too many cases of departures from Japan to come to this country just before the probable dates of induction into Japanese military service in the U. S. Army. There were draft dodgers on both sides of the conflict. [233]

Neither do responsible officials of W. R. A. hold a brief for a considerable number of Nisei who, without definite inner resistance, committed themselves to the cause of the Japanese super-patriots. There were a few of them—not many.

The group, however, which does elicit the sympathetic feeling is the group of Nisei who were impelled, decidedly against their reserved judgment and desires, and by forces which they were unable to withstand, to renounce a citizenship in the United States which they truly valued. They were not Japanese. They were not even "Japanesey." Their habits of living and thinking and working were American—not Japanese. And the best evidence in their behalf is that they weathered the violence of the Tule Lake storm, preserved their own physical safety and that of their family members and then later sought through the mitigation hearings permission for release

for the purpose of continuing to reside in this country even though it be with alien status.

Certainly not all of the Nisei of Tule Lake fell victims to the machinations of the subversive leaders. There were occasionally entire blocks where the strong leadership of two or three individuals protected the residents from the unwelcome inroads of Japanese super-patriotism. There were individual families and family members whose influence and standing in the community enabled them to stand safely on "the other side of the fence." After all, the subversive leaders and their "goons" were not altogether brave and fearless. Their penchant for exercising coercion and compulsion was tempered with an inclination to feel out the resistant strength and the vulnerability of the proposed victims, either singly or in groups. Thus, they realized that there were many whom they could not embroil. For example, the chef of the administrative mess was a burly figure of middle-aged man who had a wife and several children. An alien himself, [234] frustration and disappointment induced by the evacuation and its attendant pecuniary losses led him to determine to take his family with him to Japan, and the sooner the better. He was influential enough to get on the passenger list of the Gripsholm for its second exchange trip, but he and his family were among those left over when the ship loaded at New York. His remaining personal possessions were lost in the hold of the Gripsholm, while he and his family were sent first to Jerome and later Tule Lake. With this background it seemed that George would be a made-to-order leader among the pro-Japanese group. But George had other ideas. Each time he was approached, first with persuasion and political inducements and later with threats and intimidations, he stood on his own two

feet and sent the emissaries on their way: "Get to hell out of here! I'm busy! I got work to do! I don't want to be bothered!" Later it seemed that George's faith in the American way of life was restored, for he not only wanted to relocate, but he obtained the permission of the Department of Justice to be relocated.

It cannot be denied that the course of the war had much to do with the changing attitudes of Tule Lake's population. Not as a matter of sympathy, particularly, but rather as a matter of deliberate judgment, most of the segregants did not share the American confidence that Japan would ultimately lose the war. If the war continued to be a long-drawn-out struggle, if it came to an end by a negotiated peace, or if Japan were ultimately victorious, the pro-Japanese segregants felt they would have much to gain if they came to Japan without the taint of collaborationists. For that reason they were careful in many instances to get on record with the Spanish Embassy, representative of the protecting power, as much of the evidence as possible that they were not accepting complacently and passively their lot in the "American concentration camp." They wanted to be on record as [235] having created as many administrative difficulties for the American agency as possible. The more this kind of material appeared on the record, the better they were assured of a friendly acceptance at the hands of the Japanese, whether by chance they landed in Japan before the war was over, or whether by some chance Japanese forces could overrun this part of our country in the course of the struggle. Fantastically they had the confidence that whatever they did, good or bad, would make little difference in their treatment at the hands of Americans.

For the hard core of Japanese adherents the end of the war brought about the eventuality they had been looking forward to. Most were sent back to Japan, or at least to internment camps to be held for deportation. Though it is certain they did not find the kind of Japan they were looking for, the kind they thought they would find, there is no reason for us to be regretful of their lot. They got what was coming to them, as well as what they were looking for. They were not fit to be citizens of this country, regardless of their nationality.

However, for the large group made up of unwilling organization members and followers whom the turn of events released from the terror bondage of the fanatics, there is room for sympathy and compassion. In ever increasing numbers, as soon as the pressure was eased and they could again follow their own inclinations, they rushed to do what they wanted to do—effect, if possible, the cancellation of their citizenship renunciation, or at least gain approval of the Department of Justice for their continued residence in this country. More than 3,000 Nisei renunciants, who had gone through the act of abandoning their American citizenship now sought to recover what they could of American privileges, principally the privilege of remaining in this country. Of less pressing, though not necessarily if secondary, ultimate importance, was the matter of regaining their full [236] AMERICAN CITIZENSHIP. Thus the flood of application for “mitigation” hearings bore down upon the Department of Justice with the same force as the first flood of applications for renunciation. Only this time there was no sinister body of fanatics wielding terror over them as real and actual as if there had been a club at the head or a knife at the back.

The process and program of relocating people from W. R. A. Centers was mainly a job of education. Mr. Burling points out that the resistance which developed in all centers toward the relocation threatened to stall the program. It seemed the W. R. A. had set for itself an insuperable task when it announced the schedule for center closing. Certainly there was resistance of American communities toward the acceptance of relocatees whose "undesirability" had been ballyhooed from one end of the country to the other by the more sensational newspapers. However, the education program of the W. R. A. field offices did overcome this resistance and as time went on there were more good job offers for relocatees than ever could be filled.

Likewise the evacuee resistance to the relocation program was overcome by the process of education carried on within the centers. That the program was successful is now a matter of history. Even California, the hotbed of anti-Japanese feeling and the scene of many instances of irresponsible civilian terrorism, came to accept large numbers of returning evacuees, who, in turn, overcame their quondam fear to the extent of returning to their former homes.

I cannot help mentioning a considerable reservation I feel concerning the qualifications of Mr. Burling to speak as an authority on the Japanese, particularly at Tule Lake. He was there only for two brief periods, and he saw mainly a show that was put on for his special benefit. It would be difficult for the Department of Justice people, under Mr. Burling's leadership, [237] to have provided a program better made to order for the purpose of the subversive elements of the Center. And be it said, they took fullest advantage of it. They knew the moves he

would make after the first two or three interviews he had held. They knew the program of renunciation hearings as he carried it out. They established a "College of Renunciation Knowledge" and carefully coached those called for hearings on the questions which were to be asked and the answers to be given. Specific instructions were given on what to say and how to act. A definite impression was to be made and they knew how to make it.

It is small wonder then that Mr. Burling came out with his own coined wisecrack (attributed by him to W. R. A. staff members) to the effect that the Project Direct should fire all of his staff and replace them with employees who had had some experience in a mental institution.

To add to his difficulties, Mr. Burling was so definitely impressed with the show that had been put on for him that he issued a long statement, mimeographed, signed and distributed house to house in the colony in which he detailed his observations, and stated, among other things, that the activities which he had observed were illegal, subversive, seditious, treasonable and criminal—and he decreed within the statement that these described activities *Would Cease!!*

We read this official pronouncement of Mr. Burling's with some elation. I have stated previously that W. R. A. was not a law-enforcing agency. We were glad therefore when a representative of an agency whose important responsibility was that of law enforcement did finally realize that violations of the law were taking place and we felt assured that, having decreed that such activities "Will Cease," he would take steps to see that his directions were given effect.

We had frequently discussed in staff meetings the feasibility [238] of getting an agent of the Department of Justice to make an on the spot investigation of the activities of groups we deemed subversive and seditious. I saw no good reason why a competent investigation could not gather evidence to warrant criminal charges and prosecution in federal court. And I felt that a warrantable penitentiary sentence for an alien on a charge of sedition or subversive activity, or for a citizen on a charge of treasonable activity would go much farther to produce a salutary effect at Tule Lake than the inconsequential and picaresque disciplinary actions which came within the authority of the Project Director under the disciplinary regulations of W. R. A. We were allowed to break up meetings, confiscate bugles, headbands and sweatshirts bearing insignia or organizations, and apply a jail sentence not to exceed 90 days for each proven offense. Such punishments were inadequate in the face of the situation. We could not have established an effective control of the subversive activities even if we had dealt as many maximum jail sentences as the Department of Justice ultimately applied internment orders.

Even though this statement has attempted to go somewhat into detail as to the underlying influences and pressures which existed at Tule Lake at a time when they so clearly influenced the rush of applications for the renunciation of citizenship, the background is still very sketchy. It is impossible to bring out the full picture within the framework of this statement, even if the writer had the ability to do so. The main point is, and I am very emphatic about this: Whatever the definition of "coercion" in legal parlance, there was as much compulsion, as much outside impetus, as much influence of terrorism at work

on the subjects when they were closeted with the hearing officer and the stenographer in the hearing room as if a shadowy "shave-head" had been standing behind them with a club. These subjects [239] had no assurance or belief that what they did or what they said would not come to the knowledge of those who dominated them. They were afraid not to do what they had been told to do, and they were afraid to report falsely what had actually taken place. They had to act out the part, however, they may have felt about it. And they understood far better than any of the hearing officers appreciated what it was that they were doing, because the hearing officers were merely concerned with the question of whether the subjects understood what was happening to them as they went through the renunciation procedure. How much more the subjects really understood!

By granting somewhat over 3,000 renunciants a mitigation to waive deportation and permit their resettlement in this country as aliens under the law, the Department of Justice has demonstrated a conviction that their presence in this country constitutes no danger to the national security of the United States. If the victims of this tragedy, in these better and calmer times, are not able to repair the damage which they have done to themselves under the stress which I have described, then I have the conviction that there is something inequitable in the law or in the application of the law.

HARRY L. BLACK

Subscribed and sworn to before me this 9th day of August, 1947.

(Seal)

MAMIE F. ROBIELY

Notary Public in and for the County of Merced,
State of California. [240]

[Title of District Court and Cause]

AFFIDAVIT OF DR. MARVIN K. OPLER

State of California

County of San Joaquin—ss.

Marvin K. Opler, being first duly sworn, deposes and says: I am a Professor of Sociology and Anthropology at Occidental College in Los Angeles. From May 24, 1943 to April of 1946, inclusive, I was employed by the War Relocation Authority (most recently under the United States Department of Interior). I was in residence throughout that entire period of three (3) years at the Tule Lake Relocation Center in Northern California. I had previously worked for a brief period for the National War Labor Board, and was, therefore, not unaware of the workings of the government agencies prior to this experience in the War Relocation Authority. In May of 1946, I was transferred to the Washington Office of the War Relocation Authority after Tule Lake closed, and again, as Social Science [241] Analyst. In fact, the bulk of my experience has been that of a social scientist, and I have taught also at Reed College in Portland, Oregon, and at the University of Colorado at Boulder. To complete the process of identification, I might add that I hold my degrees in the fields of Anthropology and Sociology from the University of Michigan at Ann Arbor and from Columbia University in New York City for the Doctorate. My studies have ranged from sub-arctic studies under the explorer and geographer, Stefansson, to American Indian Tribes on reservations in the Southwest, and to community groups in American cities.

In fact, the bulk of my field experience, which I believe aided in later understanding the total problems of

Tule Lake, was very largely in the field of what is technically known as the acculturation process, wherein one is concerned primarily with what happens to peoples of varying cultural background under the impact of different cultures and of governmental and administrative programs. I had studied modern Reservation situations for Commissioner John Collier and others of the United States Bureau of Indian Affairs and there found matters of mass response and social psychology paramount in importance. I should add that these efforts were supported over a period of years by national foundations like the Social Science Research Council and by Columbia University. I state these credentials merely to emphasize the fact that I am not typically employed in government agencies, have as motivations the usual ones of the social scientist, and unlike Mr. John Burling, whose contrasting affidavit I have read, was never placed in charge nor made responsible administratively for the renunciation program, dealing with persons of Japanese ancestry, but of American citizenship. Rather, as Mr. John Burling himself described my function, I was an anthropologist and happened to be present at renunciation hearings. In his words, my work was solely "to gather social information concerning the community and to report on community trends." [242]

Mr. Burling, by contrast, was part of the administrative personnel of the Justice Department and, what is to my mind more significant, largely responsible for both the nature and the progress of the program of renunciation under discussion. While I have the greatest respect for his credentials in law and legal enforcement, which happens to be his field of training and practice, I feel, and then felt, certain limitations in his training and back-

ground in the realms of social and psychological affairs. While, to be sure, many attorneys are relatively free of such limitations, Mr. Burling's account of renunciation and his conduct of that program make no mention of, or use of, the socially valid factors in the program of which he was in charge. Against his residence at the Tule Lake Relocation Center, which aggregated three (3) months at the most, I set my three (3) years of experience, preceded by experience in other similar and also socially and psychologically relevant field situations. Against his brief comments on the nature of the mass responses involved in Tule Lake renunciation—forty-five (45) pages in all,—I set my file on Tule Lake, comprising thousands of typed pages now committed to the official repositories of the National Archives of the Library of Congress and of the University of California at Berkeley. Both his affidavit of forty-five (45) pages, and my file, which is available at Berkeley for consultation, deal in part with the background and specific history of the renunciation program. Against the fact of his administrative responsibility in the conduct of the program and his obviously personal concern in the outcome of this case, I set my impartial position as Social Science Analyst, with the War Relocation Authority, which involved factual and scientific criticism of the functioning of all three agencies, the Department of Justice, the War Relocation Authority, in which I was employed, and the Army, each of which was, at points, crucially involved in the handling of the Tule Lake situation. I submit, therefore, that in the remarks to follow, [243] I have no axe to grind save that of an impartial social science investigator, whereas, as is well-known in governmental administrative programs, the administrator has always the problem of justifying his procedures and

would, of course, have, however unconsciously, such motivations impelling him, particularly where matters of personal accomplishment are complicated, as in the present case, by processes of litigation.

There is one further point, before making a generalizing comment on the renunciation program at Tule Lake which Mr. Burling largely administered. In comparing his forty-five (45) page brief with my file duplicated in National Archives and at Berkeley, I have in mind the fact that his is written under the date of November, 1946, and either just before or after his resignation from the Department of Justice. At any rate, there can be no doubt that the Burling affidavit occurs in present circumstances of litigation; whereas, my file was a contemporaneous and running comment on all programs, including renunciation, written throughout the course of this program, reaching back into evacuee history for about two (2) years preceding the program, and in no case revised for purposes of "Sunday-morning quarter-backing" at this present juncture. As such, I feel the forty-five (45) pages may well fall under the general description of post facto judgment. I find this judgment substantiated by certain inaccuracies in Mr. Burling's forty-five (45) pages of comment "after the event"; as where he states on page 22 of the copy which I consulted that I heard, at most, twenty (20) cases out of more than 5,000 renunciation hearings. Beside my file of thousands of pages in the National Archives, I have a personal file of raw data, and notes which I am using in writing a more elaborate account in book form; and these materials from Tule Lake, remind me further that I recorded at the time of the hearings notes on about twenty cases in the first two days when I personally sat in with Mr. Burling on

his own first hearings, as observer. The persons and [244] hearings, which I personally witnessed reached beyond this period, both in time and in extent to the point where by attending hearings, not only with Mr. Burling, but with other named hearing officers, Mr. Rothstein and Mr. Shevlin, which were conducted week after week, sometimes attended mornings, sometimes attended afternoons and sometimes attended for whole days, the total number amount to about 2,000 hearings involved in my experience. Hearings I checked on in addition also come under the heading of those which I obtained indirectly, but in description through interview with subjects in the Center, largely as to what the content and procedure of their hearings had been. This portion of notes on hearings, not witnessed, however, is minor and I feel that most of the 2,000 or so may safely be said to have been witnessed by myself, in person. I conclude, therefore on this point, that Mr. Burling not only minimizes my observations, but in reducing them one hundred times in extent sets up his testimony as the only relevant experience. Mr. Burling states that no other War Relocation Authority employee was present at hearings and forgets that others beside myself served as translators, one, for example, from the Internal Security Department and Translating Staff of the Relocation Authority. A particular employee of this category, it was later discovered, so distorted statements made orally and originally in Japanese,—out of motivations of prejudice, that the Authority later terminated her services. Undoubtedly, hundreds of hearings yet stand in the records as mute testimony of her malice and venom. Mr. Burling possibly forgets these circumstances of which officials of the Department of Justice were advised I am sure.

I should add here that in the close and narrow community other administrative personnel, in categories of teacher, of Caucasian church leader, of social worker, of maintenance worker, of Project Director, Assistant Project Director, etc., heard in great detail from evacuees both as to the nature of their hearings and as [245] to motivations which prompted their responses behind closed doors. In thousands of mitigation hearings where renunciants later appeared, the testimony of these persons was accepted by Mr. Burling's office as valid. What disturbs me particularly is that Mr. Burling's affidavit would have us believe that at Tule Lake, out of a population of 18,000, practically all the eligible American citizens to the tune of more than 5,000 young persons would have renounced American citizenship through feelings of disloyalty and not because of the well-known factors of coercion, mass hysteria or mass compulsion, isolation, rumors, fear of physical threats, feelings of discrimination, and all the general emotional factors and excitation which were later recognized and which administrative personnel, some of them in this city, hold as common opinion. In Los Angeles now, Mr. Louis Noyes, Project Attorney and Mr. Bernard Shallit, Relocation officer, could further substantiate these views. Apparently, Mr. Burling would have the Court believe that 5,000 eligibles out of 18,000 persons is the measure of loyalty in one government-run town of impounded people,—whereas, in the country at large, where the population is 130,000,000, there were only about a score of such renunciations outside the Tule Lake Center, patterned much more individualistically and in accordance with real personal needs and desires. If Mr. Burling insists that Japanese ancestry involves a species markedly different from German or Italian, I should

be glad to revise my figures to 5,000 eligibles out of 110,000 evacuees and to contrast this ratio with the one or two millions in the latter categories. Mr. Burling would then have us believe that at Tule Lake we had a special species of genus *Homo*, and that there for reasons not explained but implied to be subversion and disloyalty, the entire citizen population would have, in normal frame of mind, renounced American citizenship. He tells us, on page 3, that "few of the persons segregated" were made to do so. I believe it is fundamentally in opposition to the spirit of our democracy and to the [246] general ideals under which the Department of Justice normally functions to make any such assumption. He tells us on an earlier page that over 6,000 original Tuleans simply opposed movement and hence were obviously "loyal" residents of the Center. Surely the cold statistical contrast between an impounded population of 18,000 where all citizens renounced behind barbed wire and outside the normal stream of American life, and the twenty people throughout a nation of 130,000,000 who so acted, raises a question which cannot be properly answered without recourse to the specific and unusual conditions under which the 18,000 lived. The more than 6,000 Tuleans Mr. Burling mentions who refused movement did so only after the third or fourth move in two years. I submit that the only other possible explanation Mr. Burling allows himself, and the one to which he seems unconsciously to subscribe involves a continuance of racist and discriminatory thinking which in this case would hold to the time-honored dictum of General DeWitt, that, "A Jap is a Jap."

There is no middle way between the horns of this dilemma. It is now common knowledge that these 6,000 "loyal" Tuleans were joined by thousands from other centers.

Either the conditions of governmental duress, internal coercion and psychological compulsion explain the action of the "loyals" renouncing in the total number of 6,000 (not 4,000 as Mr. Burling later opines), or we must assume that in skin and bones and hair, there were always the seeds of national affiliation. The Nationality Code, under which, as a subsection (i) of Section 401 this renunciation program operated in wartime, has as a basic principle the granting of citizenship by place of birth. It is this very principle which Mr. Burling would hope to contravene by insisting on the operation of a renunciation program where terror, assault, rumor, coercion and duress played the significant roles.

On page 6 of his Opus, designed to describe the tainted air at Tule Lake, Mr. Burling quotes approvingly the testimony of [247] some former War Relocation Authority employees rounded up by the small but vocal Committee of the California Legislature. It might be instructive to add that these same people are credited in War Relocation Files as having seen oil-soaked rags and knives on the famous 1st of November incident of 1943. It is known now by virtue of affidavits signed by all employees of Tule Lake Center at the time (over 100) that their testimony was perjured by groundless fears and prejudices. In the light of over 100 eye-witness accounts which cross-check we may now discount such evidence, long since discounted by Clair Engel and others of the original committee.

Fortunately, the Nationality Law does not stress racial characteristics; nor does it emphasize the question of where a group within this country had in earlier generations its national origin. I am, of course, aware that the Japanese Issei (or the first generation group) are still

held ineligible for the process of becoming citizens and, further, regard this situation, at variance with that of foreign-born Hindus and Chinese, as a discriminatory bar. However, as concerns citizens there is no doubt that citizenship in this Code has already generally been interpreted in the geographical sense of birthright and not in any racist conception. I for one should be alarmed to see the Renunciation Law contravene in spirit and effects the Nationality Code of which it is a most dubious and extremist portion.

Mr. Burling's current philosophy on nationality would, it seems to me, if carried to its logical conclusion, subvert this principle of geographically determined birthright to the lesser interests of one which stresses the blood and bones and hair theorems of erstwhile undemocratic countries—notably Nazi Germany and Japan. If one holds otherwise, namely, that the renunciation law was equal in its effect throughout the country and merely netted the catch of 6,000 customers at Tule Lake because there the nation's total quota or ratio of "disloyals" was confined, one assumes again, however [248] unconsciously, that peoples of German ancestry, peoples of Italian ancestry, and even those of Hungarian ancestry are, in all cases, more amenable to the ways and ideals of democracy in second generation groups than are those who come under the label of our national minority of Japanese ancestry. I feel such thinking is equally as discriminatory, as separatist, and as racist, as the blithe contention, now famous, of General DeWitt that "A Jap is a Jap." I am reminded at this point that Mr. Burling himself admitted to me that the Renunciation Act which he was delegated to draft and put into operation, was the result of racist and discriminatory pressures upon the Justice Depart-

ment to de-nationalize American citizens of Japanese ancestry.

Personally, I find the opinion of social scientists and of democratically-minded people to the contrary, much more acceptable. We all know that in the ten centers to which 110,000 persons of Japanese ancestry were committed for periods of several years, we had, in essence, both artificial and transient communities, housing in barrack-apartments lacking privacy, people who easily could be termed "people under stress." While this initial fact is granted in part by Mr. Burling, the consequences which flow from it are hardly realized. On this question, I should state that "people under stress" include those 19,000 found at Tule Lake in the spring of 1944. Mr. Burling on page 6 refers approvingly to the Dies Committee as critical of the situation at this center "as it then existed." Is he unaware that Congressman Eberharter, of this Committee, pointed out that the Committee as a whole, and with few exceptions, had been gunning for the War Relocation Authority for some time before the Spring of 1944? Congressman Eberharter took the Committee to task on this matter as having been riddled with prejudice. The concensus of all published opinion is that it was. As a matter of fact, in the Spring of 1946, just two years later, the W. R. A. Director, Mr. Dillon S. Myer, received the Presidential Citation and Order of Merit [249] for meritorious wartime services which had ostensibly been "investigated" in the Spring of 1944.

The Tule Lake population, like all "people under stress" living uniformly in an abnormal environment and subjected to a complicated maze of specially designed governmental restrictions, programs and regulations, generally developed a mass or stereotyped set of reactions and senti-

ments which reflected the conditions under which they lived. While individual pressure groups and prejudiced-minded men busily raised the racist bugaboo, certainly no government department, particularly that concerned with Justice, should ignore the effects of "reservation life" upon a people who were uprooted, moved from center to center, or, as Mr. Burling described and as he said, economically disadvantaged and consistently attacked even in the newsprint which they read by hysterical forces such as are engendered in any wartime society. The hearing officers at the time of renunciations repeatedly alluded to the fixed and stereotyped reactions and responses which I noted also on the part of renunces. It is futile to state now that doors were closed and hearings private. The hearings were held in Tule Lake Center. So long as they were held there, the abnormal conditions of Center life prevailed and could be noted in mass responses, mass fears and mass hysteria.

The specific conditions of Tule Lake Center, before, during and after renunciation, were decidedly worse for the individual resident than Mr. Burling is willing to admit. In an affidavit filed, apparently, on behalf of the Department of Justice, Miss Rosalie Hankey of the Evacuation and Resettlement Study of the University of California goes far to document this point. It is true that Miss Hankey, on page 46 of her affidavit states: "The threat of immediate physical violence . . . was a relatively minor motivation toward renunciation." But she speaks, on page 3, of the same manuscript of "terrorists and persons guilty of violent assault," "of the lack of privacy" from which no one escaped, of beatings and assaults, and [250] the murder of Mr. Hitomi. On Page 4, she alludes to a center contact, or informant, "alleged to control a

gang of terrorists," on page 5 of "pro-Japanese pressure groups," (all of which are now across the Pacific and in Japan). These groups are ones which Miss Hankey admits, at other points in her complicated document, were dealt with by the W. R. A. Administration and certainly well known to the W. R. A. Several of these individuals were known to Project Administration and their avowed purposes, also no mystery, are well documented in the W. R. A. files. As I wrote at the time, it was primarily the poor timing of the renunciation program which gave them the occasion for exerting pressures on all project inmates and surely Mr. Burling must be aware of the suggestion of the W. R. A. (myself included) to call off the program of renunciation, now not merely proceeding in a setting of governmental detention and duress, but under the most violent and terroristic center conditions imaginable.

But Miss Hankey goes on: "Individuals and groups," she says on page 8 of her affidavit, "vacillated constantly as they were swayed by events, news, and rumors." On Page 9, "prolonged insecurity and indecision may unbalance even individuals who possess great mental stability" and the Tule Lake people, at the time of renunciation had been subjected to a state of governmentally-imposed duress and indecision for four long years. "They were predisposed to fall into mass anxiety which on several occasions rose to panic," she states, and then, on pages 14 to 17 describes the excitement, confusion, turmoil and assaults which characterized the renouncing pressure groups and their effects on center residents. While in these statements, Miss Hankey draws out a part of the description of Tule Lake, I should add that throughout this period I collected in equal amount, if not greater,

statements of loyal young Japanese-Americans who throughout this period of pressures, threats, and coercion, and in some cases "immediate physical violence" found the way out by the ritual of citizenship-renunciation. For what I feel [251] is Miss Hankey's tendency to draw out sensational statements rather than actual case histories of violence and coercion, I can only state the belief of project officials that she herself was ejected from the center when the Department of Justice (the same that Mr. Burling represents) discovered her writing in rather sensational terms to internees under censorship in the Santa Fe and Bismark detention centers.

What it is hoped this process of judicial review may accomplish in regard to this general question of renunciation is that we may depart from a continuance of the discriminatory, "special," separate, and hence racist treatment of persons of Japanese ancestry, whether they resided at Tule Lake or elsewhere. Any other course can only serve now to implement the ridiculous connotations now faded from the public mind of "Jap saboteur," "agent," "dangerous element" and "fanatic," which still it seems to me, are applied to the former citizen population of Tule Lake. My contention is that they do not fundamentally constitute any more than a group of people acting under stress, governmental duress, coercion, threats of violence, rumors, hysterics, isolation, racist segregation, misinformation, pressure groups, actual violence, economic loss, and general unbalance and insecurity. I am sure, therefore, that the causation was social in essence, and not political or racial.

In my three years of daily observations, interviews, and notations on this population, I found it to be a fact and a predominant fact, that the chief ingredients of the "dis-

loyalty" label were frustration, isolation, insecurity, harsh treatment, ignorance, mass hysteria, compulsive coercion, emotional responses and fear. It would seem to me that the post-war era should see an end to the time-honored process of making this population a scapegoat to outside pressure groups which made stereotypes of Tule Lake population. In so saying, I am acutely conscious of the fact that among our erstwhile renunciants, expatriates, segregees, excludées, evacuees, and [252] other "untouchables," every group mentioned had its relatives, in great number, in the famous 100th Battalion and the 442nd Regiment of the United States Army, in the Army and Navy Language Schools, and Divisions of Intelligence, in the Office of War Information, and in the fields, factories and homes outside center confines. It would be a most remarkable miscarriage of justice if this aggrieved and constantly penalized population should pay with the right of citizenship of many of its number for the prior abrogation of those rights in the fact of their evacuation, continued detention, economic immobilization and general hysterical discrimination.

I should like next to comment upon the general fact of cultural revivalism which occurred among Issei parents of this renunciation group at Tule Lake and even at the assembly centers under Army jurisdiction, as well as at all centers under the Justice Department and the War Relocation Authority administrations. Again, I have reference to a file of thousands of pages which documents this cultural revival of things which properly should be labeled, not disloyalty, nor subversion, nor yet conscious warring against the tenets of our democracy. It may be of some importance to realize that this phenomenon is by no means new in history. The mass hysteria of the

Children's Crusade in feudal Europe is a case in point, where the conditions under which people lived produced hysteria of a mass type and compulsions in behavior among old and young alike. Feudal society had been dislocated by earlier Crusades, via population losses, and children and youth, with no place in the local communities, hysterically joined in a long march to "save the Holy Land." In modern times, there is the well-known example of the Ghost Dance Religion of the 1890's and later which swept over American Indian reservations by the dozens at a time when tribes were confined to reservation settings and controlled by the artificial processes of strict military and "governmental" rule. The same ingredients of isolation, frustration and fear were operative [253] then, as in the present instance; tribe after tribe of impounded people usually projected the wish that conditions sustaining the old culture would return, and that their tormentors would be swept aside, or religiously controlled, whereupon they might again live unmolested on the broad lands of the reservation or beyond. At Tule Lake, there were countless rumors, now embalmed in National Archives, to the effect that renunciation alone could guarantee a future unmolested by the Relocation Program and in which Tuleans, finally, could run their own affairs. That it meant "exchange on repatriation vessels," alone, as Mr. Burling contends, I seriously challenge. He does quote Mr. Myer, on page 8, as thinking on November 1st and 4th, 1943, that perhaps one or two thousand "disloyals" would expatriate voluntarily and involuntarily, the latter under the full force of culturally revivalistic parents at Tule Lake who quixotically hoped to revive the old ways of the old culture. Since Mr. Burling's Department knew of several repatriation trips

subsequently arranged, he must know by now that Mr. Myer's "one or two thousand expatriates" have already gone to foreign shores. In addition, since four thousand actually went, there are two thousand assumed loyals already departed from these shores, according to this arithmetic. I am afraid Mr. Burling is, then, about right in his figure; we have already lost about two thousand (and at least certainly) one thousand decent and loyal American citizens to other shores through the workings of Mr. Burling's renunciation law. It seems curious, indeed, that he should then wish this process extended still further beyond any possible disloyal grouping to divest of citizenship an essentially loyal, but coerced and intimidated group.

The innumerable instances at the Tule Lake Center and elsewhere, where mass compulsions linked up with a cultural revivalism to produce demonstrations are exactly of this general sort. There was, in all center incidents, the same emotional solace found in responding with cultural weapons and with a socially solid front to [254] the disorganization, isolation and fears which emerged at times in all centers. While the efflorescence and development of these cultural values occasioned much excitement in certain quarters of the West Coast press, we do not feel that a government agency should become similarly "excited and emotionalized" when the facts of community analysis are readily available. After all, as we have said, this cultural revivalism was a condition which had occurred on dozens of American Indian reservations in the last century and as a matter of fact, in reporting scientifically on the Ghost Dance Cult among the Ute Indians of Colorado, in 1941, I had earlier dealt with a quite similar case. Dr. Alexander Leighton, in

his book on the Poston Center called the Governing of Men, produces other examples in relocation history. I do recall discussing these analogies with Mr. Burling, and that his response was simply that the exigencies of public relations demanded putting a stop to more extravagant modes of cultural revivalism as sketched in his affidavit.

Yet certainly there are no exigencies of public relations now (over a year since Tule Lake closed). I myself am part-author of a volume published by the Department of Interior in 1946, called "Impounded People" and frank in its description of the pressures and confusions laid upon people of Tule Lake. If the W. R. A. can publish its historical and sociological studies by the dozens, there is no longer a factor of "public relations." But there may be a factor of "face-saving," on the part of Justice officials, in the present instance. In fact, I should add also that in the same oral conversation, Mr. Burling informed me that he had written this same renunciation law and its procedures to set up specific barriers against "too easy renunciation"; that is, fearing that the act was, in a very real sense, discriminatory when applied inside centers to people who had suffered profound social and economic dislocation, he had decided to insist that forms be sent to Washington and received back from Washington as a kind of hurdle or barrier to [255] prevent the mass effect which might easily obtain. If anyone could pick up a form in a center, so Mr. Burling stated, and simply fill it out thereby accomplishing the first steps in renunciation, the whole process would be endangered. It is only necessary to recall at this point that such forms were typed on the project and led in the course of events to mass renunciations, that an organized group typed such forms and popularized their contents, that Mr. Burling

himself gave out such forms to a limited number of persons in the Center proper (when they appeared for hearing upon their request and wished to renounce) These same individuals typed forms they themselves copied off and Mr. Burling accommodated them in the first hearings with printed forms and special attention.

I do not feel that Mr. Burling's passing out of forms essentially changed the situation at Tule Lake, although the Department of Justice thereby modified and changed the restrictive procedures in regard to the use of forms which he himself had devised as the only way of making renunciation less the result of mass hysteria. However, I am confident that these supposed hurdles and barriers to renunciation were not effective barriers and that many persons, like Mr. Rothstein, realized that inasmuch as patterns of individual and group coercion existed, they should in hearing procedures inquire into the question within the Center confines as to whether given individuals had themselves requested such forms or intended only to comply with the desire of organized minorities at Tule Lake to have them complete their renunciations. In the same way, I should discount the fact stated by Mr. Burling that the door was closed as the hearings proceeded. There were rumors that persons in the Center had better make strong enough statements to get renunciation accepted or else suffer the consequences of others learning later of their non-acceptance. While Mr. Burling correctly states that doors were closed in most, (though not all, of the actual hearings) he forgets to add that the Center, as a whole, was enclosed by [256] barbed wire fencing, and that when one opened the door to his barrack apartment, he immediately saw the limited horizons, heard the exaggerated gossip and left the inevitable lack

of privacy occasioned by the presence of 18,000 people living in one square mile, effectively fenced in and isolated from the mainstream of American life. The lack, for months, of adequate policing, the facts of brutal beatings and one murder, and the later suicides of a few renuncians simply do not exist in his facile account. At any rate, the closing of doors had no real effect. After the door was opened again, the segregee had to return to the center, and its well-known pressures.

In like manner, Mr. Burling chooses to minimize the overall effect of the Hitomi murder upon the Center as a whole, instead preferring to present the case as merely the result of philandering on the part of the murdered man and involving his own brother's wife. Aside from the inaccuracy of this assumption, I feel that there is here an unfortunate recourse to gossip having no basis in fact, and contrary to anything remotely like analytic procedures. I had, in a report prior to the Hitomi murder, predicted trouble in the Center in the month of July, which I stated, in a June report, would emerge from the upset Center situation. Hitomi's murder at the end of June came after these dolorous predictions and, of course, only a few days before the start of July. I firmly believe the murdered man's character is, therefore, maligned in favor of gossip some of which started with W. R. A. employees for not a shred of real evidence ever substantiated the philanderer myth. The children of the brother so accused by implication are thoroughly Americanized non-renunciant youth of this nation, all of whom had successful careers in relocation. The son was employed on my staff as staff artist subsequently though only a high school lad, and he gave every evidence of real affection, as did the entire family and families involved, for his

murdered uncle. All family members attributed the murder, as did I in reports and Miss Hankey in her affidavit, to renunciant-minded [257] terroristic gangs, small in total number and long since in Japan. I mention the case only for the inaccuracies of Department of Justice discussions of these matters. These men, who scarcely knew the project and its history, let alone its inmates, were nevertheless the authors and executors of the renunciation program which divested thousands of their American citizenship.

But what is more important, not only did the "ghost" of Hitomi or fear of murder and violence by pressure-groups affect the project for more than an year afterwards (and I reported on this from time to time), but in addition, there was, in this entire period, a number of instances of assaults, coercion and evidences of the effects of being held in duress, which I noted then, and indeed, all through the renunciation program and its aftermath.

Without giving even a minor fraction of such instances which I recorded and transmitted to Washington in reams of weekly and sometimes daily reports which Mr. Burling himself states were available to him and used by his office, I could mention the man who moved from a block where the headquarters of a coercive group located and thereafter moved several times to avoid the same influence and intimidation of "organization" leaders now in Japan; or the young man who (despite being an honorably discharged soldier of the United States Army) was assaulted late at night and otherwise coerced in regard to renunciation; the case in point of the young man whose mail was tampered with to discover his status in regard to the fact of his renunciation; and so forth. There is no point in elaborating now, or years later as does Mr.

Burling, on the question of coercion, or on the question of being held in governmental duress, or on the question of mass compulsions which motivated case after case at Tule Lake. It suffices to point to the record embodied in thousands of pages of material in the National Archives and written as a running comment on the renunciation program as it actually unfolded. This file was built up as were the implicit facts of duress and coercion, [258] at the very time when the program itself was being carried forward. There is, therefore, no question of my constructing a recent account when we allude to this file of material gathered for the government. There is, in addition, a still more extensive personal file of data which the affiant now has and then procured in an effort to round out the study of the Tule Lake community and its response to the impact of this and other governmental programs. This file documents the fact of the presence of coercion, of duress, and of mass compulsion, week by week and case by case. The only file on renunciant cases which approached it in extent was that gathered by Mr. Louis M. Noyes, then project attorney, and still attorney in governmental service. This fact of coercion of renunciants is admitted, it seems to me, by Mr. Burling himself not now publicly at this time of legal judgment, but certainly in the famous letter addressed to Mr. Sakamoto of the Center, in which Mr. Burling dwells on the entire Sakamoto organizational leadership as intimidating the center at large, including the membership of Mr. Sakamoto's own group.

The point made on page 16 of Mr. Burling's affidavit that an office was "assigned" to this pressure-group by W. R. A. is wholly erroneous. The office was raided and closed on my discovery of it and the W. R. A. has pre-

sented to National Archives photos of Internal Security officers conducting the raid with Justice Department officials looking interestedly on. His statement on page 15 that their calisthenics glorified Japanese heroes in history is likewise in error. His definition of Nisei, on page 7, is completely confused with another term, that for Kibei. His point, on page 19, that there was a routine check in hearings on the possibility of coercion is naive enough to suppose that without proper protection in the Center, without a City type of police organization, without street lights and with 19,000 cramped into a single square mile, with at least one murder and several cases of assault on the record well known to all, the people of Tule Lake would confide to him on two minutes' [259] notice as to their basic fears, their impelling compulsions or on the long-standing effects of isolation which no government agency—the Army, the Justice Department or the War Relocation Authority, had even begun to assess fully in the four long years of detention. The "routine check" in thousands of daily hearings which I witnessed was merely a rather ambiguous, "Are you doing this of your own free will?" Even the phrase "free will," was possibly not understood by most of the agitated and upset subjects.

It is important to realize also that the renunciation program, though it was embodied in law, came at the end of a long series of extra-legal governmental programs which applied to the people of Tule Lake inter alia, and, which in every case, failed so miserably that they added to the total confusions about status and about effects of detention which we reported in the 1946 volume, "Impounded People" as undoubtedly influencing the people's assessment of renunciation itself. To specify briefly again, it does injustice to the large file of descriptive and analytic

material to which we have already alluded to suppose that Tulean residents felt "these papers" to be any more binding in effects than previous loyalty registrations, or repatriations, all carried out under governmental duress and center pressures. However, it is well to realize that the first of the series, called registration, failed completely in the Tule Lake setting even before Tule Lake had become a segregation center. The fault of this lies by no means exclusively with the 13,000 residents of the then Tule Lake Relocation Center, that is before segregation. The program, as we stated about three years ago in our reports, was inaccurately introduced as a Selective Service program and this error, which alone took place at Tule Lake, convinced the majority of the then-residents that whenever citizens registered loyalty, which all were being asked to do, the boys, and young women as well, would be immediately inducted on a mass basis (and regardless of order number) into the [260] appropriate branch of the "Armed Forces,"—ordinarily phrased as a segregated and racist-conceived labor battalion. To realize what this meant to Center people, we must remember that these same persons had been evacuated from their homes on short notice, had gone to Army assembly centers, had in some cases been "honorably" ejected from the Armed Forces (Fort Ord was famous for this) and had been uprooted and moved again into relocation centers always on a mass basis which designated that the West Coast population of Japanese ancestry as a separate group, marked for such separate treatment, was under general suspicion. Boys who attempted to get into the Air Forces could not. Several of these later renounced. Obviously, the important principle of equality of all citizens before the law, had, in their opinion, already been abrogated by the total circumstances of race prejudice and war hysteria

which accounted for their being in barrack-like apartments in or out of "restricted zones" and subject to special determinations of government agencies which had not yet, in any case, given any recognition to the rights of the individual and of the family to choose location and occupation and career in accordance with their individual and private consciences and their sense of public responsibility. If the government so acted, the press re-enacted time and again the hatred and suspicion laid upon this group of west coast refugees. The Tule Lake Center, at any rate, never completed its loyalty registration, and this was not simply a point of disaffection. The Community Council, the Planning Board, (which represented democratically all Issei or first-generation residents of all blocks and wards in the Center), and the Block Managers (who, in turn were hired by the government or project administration as a channel of information to the center residents),—all these three bodies and others besides offered their service to the Project Administration in pushing through loyalty registration. In hopes of overcoming misconceptions which had arisen about the nature of the registration program, and in an honest and frank effort to help see [261] the program through for the government, these groupings offered to aid and expedite the entire program. I have, in my personal files, the original signed document of the Project Director at that time, in which he refused such community aid in straightening out confusions which his own staff and notably the Assistant Project Director, (who had been to Washington, D. C., to get the outlines of registration procedure from Army officials) had themselves engendered in the Center setting. As a consequence, there are thousands of Tuleans who, out of resentment or confusion, certainly out of feelings of discrimination, never registered. There was, in addition,

a set of incidents which involved taking people from blocks in the project and transporting them, under machine guns, in the height of this confusion, to a special detention center in Arizona. This set of circumstances, plus the latter confusions and coercions, marked the effective beginning of renunciation for the Tule Lake Center.

There were at Tule Lake a number of people who, though incensed at this procedure, nevertheless maintained enough composure to answer affirmatively on loyalty during registration, and an additional number who, with perhaps slightly larger amounts of resentment at their mistreatment, simply registered a conditional answer, which usually stated that their loyalty was affirmative "if the citizenship rights" of the population were restored or duly honored. In other words, back in registration times, there was doubt that citizenship was merely a matter of loyalty to be displayed mechanically on paper by citizens, and some feeling that it involved reciprocal rights and privileges connected with status in the eyes of the government. As concerns segregation, the program which came next, the Tuleans should have been represented at Tule Lake by about two thousand persons of segregee category. Actually six thousand in all staged a kind of resentful sit-down at the injustice of being forced to move again, now for the third or fourth (in a few cases, the fifth) time in the history of Center residence. This meant that fully four [262] thousand Tuleans were involved in the segregation program at Tule Lake who were not disloyal in any paper program, even according to the somewhat blurred lights of the registration procedure.

The four thousand "loyals," therefore, the citizen component of which (though loyal at registration times) was later swept into the renunciation program, was finally

divested of American citizenship. In addition, the segregation process allowed for other loyal citizens of other projects to accompany families and relatives to Tule Lake. Besides this additional number of voluntary, loyal segregants from other projects, that is, additional to the four thousand "loyals" at Tule Lake and the thousands of young, voluntary segregants from eight other centers, there were a number of young people who had never undergone loyalty registration at all, but who, one or two years later, at ages of eighteen to twenty-one, were considered fully eligible to renounce their American citizenship (even at ages under twenty-one and in circumstances where no citizenship rights, like the right to vote, had ever been exercised). Thus, segregation failed since it was premised on the mistakes of registration, and this failure which was especially notable at Tule Lake, was the prime condition for the imposition of the renunciation program. The National Archives, again, are full of critical reports on this program, my own dealing especially with the mistakes of segregation premised upon the mistakes of the earlier program. If one, therefore inquires into the logic of Mr. Burling's position, or into that of any person who holds that Tulean youth were disloyal *per se* or as a category, one will find that thousands not so designated in any sense were caught in this particular maelstrom of renunciation by the mere fact of being "loyals" or minors in residence at Tule Lake who came under the criticism and scorn subsequently of renunciant pressure groups.

Besides this fact, there is the fact that Kibei, as a category, were sent to Tule Lake. Many of these individuals had volunteered for the Army prior to evacuation and had been, almost as [263] a group, honorably dis-

charged, usually from Fort Ord. These statistical facts indicate a policy of Army rejection, whether conscious or unconscious. To these one must add, among the Nisei of American education, those who had been outside Center confines before renunciation, some in war industry and in war-time agriculture, but who in the Midwest and West particularly had encountered discrimination of such proportions that they left their status of seasonal leave and hurried back to the sanctuary of the centers. One boy who renounced later had been shot at in the Provo, Utah, violence against volunteer Nisei sugarbeet workers. Another in Minneapolis, met such discrimination that he hurried back to his family at Tule Lake.

Perhaps one could best picture these separate programs of registration, segregation (and the November Incident) at Tule Lake as being a series of cars which pile up in a train wreck. As each program went off track, more and more were involved or pulled into circumstances which ultimately spelled disaster. The Tule Lake Incident, the third car so to speak, in the total wreck, while it involved no mob violence and no direct evidence of subversion, pure and simple, actually voiced the desire of the residents to have more complete Center security and as Hankey states, better center living conditions. Of course, the next car to smash-up off the rails, did so when almost four hundred young men, most of them quite blameless even according to the most scrutinizing Army and FBI records, were seized and confined in a "stockade" in full view of their families and of all center people, but at the same time out of range of ordinary communication. Many of these men,—and boys,—were held there in this area of a few hundred yards for ten months under what can best be summed up as star-chamber proceedings without benefit

of trial by jury. While "incidents" at other Centers, like Manzanar and Poston, straightened themselves out in the due course of time, they only involved the smallest handful (two or three) of people, [264] whereas Tule Lake's Incident had its cumulative effect as the ten months of fundamentally unlawful detention of hundreds of boys wore on. Manzanar's incident grew out of the incarceration of two persons and Poston's followed the same pattern; but Tule Lake's Incident ending in murder (of Hitomi) started with about 350 being incarcerated and with a general strike situation which greeted these incarcerations of the same hundreds by the Army officials in control. It is perhaps to the credit of the War Relocation Authority that after Army Control had resulted in the incarceration of more than three hundred persons and had engendered a most complete and paralyzing general strike in the center, a civilian administration was able to bring the center back to the semblance or approach to the kind of normalcy required by the relocation program in general. However, the Army lifting of the ban on the West Coast and the Justice Department's renunciation of citizenship, were the next two associated programs which affected the tenor of life at Tule Lake and prevented the "setting down" process from ever occurring. They were both timed badly, and coming together were confused in the resident's thinking.

In discussing these last two programs, it is necessary to state at the outset that nothing like complete normalcy was ever attained fully because of the Center upset occasioned by the ten months' period of "stockade" detention. The "stockade" ended with the shipping off to detention centers of Issei family heads, with the murder of Hitomi in the center, and with new defiant modes of organization

in the center proper. While the Army announced the lifting of the ban in December, practically by the next month, the Justice Department provided what seemed to Center residents the only possibility of remaining in the Center, namely, renunciation of citizenship. The timing of these two programs led to the fourth car smashing off the rails, namely, the renunciation program itself. Before the program started, the dynamiting of the Doi barn, the [265] Hood River incident in Oregon, and several other depredations had occurred and been widely publicized both inside and outside the Center. Inside the fence the stories of shootings and dynamiting had been exaggerated to the proportions of a totally prejudicial and gloomy picture of the West-coast reception of relocatees. One subsequent renunciant read in the papers just before renunciation was scheduled that he would not be welcomed back to his fruit farm in the Hood River Valley. Another personally knew the Nisei hero who was refused service in a barber shop in Arizona. He too was pressured to renounce. In general, residents feared that the stability and security of Tule Lake was affected by rescission of mass exclusion orders or by the lifting of Army ban. Put more positively, renunciation, when it began only a month later, became the only action program available as an outlet for mass emotions on the part of people whose relocation posed decided problems and whose fears of pressure groups were only matched by fears of government and fears of the American "public" in general.

Further, as we have stated in our reports to the Washington Office, especially that dated April 23, 1945, the evidence soon accumulated that renunciation not only became a law to be administered by the Justice Department, but it quickly became the action-program of a small and

well-organized group of minority leaders in the center who have since voluntarily repatriated to Japan. At any rate, their demonstrations, mass-action and mass-pressure (which Mr. Burling also described) were certainly not a manifestation of the "free choice" or "free will" of thousands of young persons but a reflection of the interplay between two programs, rescission and relocation on the one hand and renunciation on the other.

The conditions of Center life had, by now, reached the apex stage of the Ghost Dance Cult, as it occurred on countless Indian Reservations in the 1890's. In a phone conversation with Mr. Myer and in reports of this period, the affiant stated quite [266] clearly that people in the youth categories, male and female, were being swept into a kind of Children's Crusade, the consequence of which they did not recognize. These facts were repeated on several occasions to Justice personnel.

Mr. Burling seems, to my mind, almost to interpret the same facts as containing something of grave danger to the United States. To this, I can only reply that the German prisoners in the prisoner-of-war camp in Northern California on the other side of the town of Tule Lake were allowed at this time to get on bicycles and ride down to town in PW uniforms, or to take picnics on occasion in the near-by hills. These were, of course, captured prisoners of the German Nazi Army of the Reich. At this same time, Tulean kindergarten children could not take picnics; their fathers if farm workers tilled the government fields, but they too worked behind barbed wire fencing and under watchtowers across the road in which armed sentries were posted; they were conveyed there by American armed troops. At Tule Lake there was no right of free movement and certainly no escape from the

conditions of center life. It seems to me, therefore, through this simple contrast between two "camps" less than fifteen miles apart, one can see why Tule Lake people felt the force of citizenship to be null and void in their circumstances, and felt that the only security, by and large, lay in the direction of continued center residence to escape the inhospitable "outside." No wonder, then, that twenty renunciants in these confused circumstances immediately and on the same day of their renunciation cancelled their actions, and significantly this was allowed,—in these twenty cases,—according to the best lights of Justice Department personnel.

Months later, when the Justice Department allowed mitigation hearings to take place, the total group of renunciants at Tule Lake again spoke up by the thousands to have their renunciations cancelled, in effect as well as in fact. It seems to me only that their confusions, fears and pressures lasted longer than the twenty. Today, I [267] understand, the Justice Department has no Nisei renunciants incarcerated. But they had them detained by the thousands and later by the hundreds. Can it be that confusions within the Department of Justice personnel ranks have in time likewise dissipated, or is it that those released are now considered sufficiently "loyal" by the same agency which formerly considered them "disloyal"?

The renunciation law, itself contains certain attempts to safeguard citizenship in that it states that the act must be "individual" and "voluntary." At Tule Lake, only a minor proportion of these acts were individual and voluntary, and these were, in each separate case of truly voluntary action, followed as soon as was possible by repatriation to Japan. The voluntary renunciants, it is obvious, are no longer in this country. The pressure-group

organziation, mentioned above, typed and circulated its own one hundred and seventeen renunciation forms and even in the first one hundred and seventeen, there were individuals who did not understand, it seems to me, the nature and consequence of their acts. But the fact remains that those who wished to leave America are gone. As stated above, some went involuntarily through group pressure, parental insistence, etc. One boy, in this typed-form contingent, explained to me at the time and in my office that he could not square the doctrine of a "Japanese Co-Prosperity Sphere in Asia" with the Imperial Japanese policy of striking down Chinese on the mainland, but that his father required either his accompaniment to Japan or his aid in the center barracks; and that he was, for this reason alone, renouncing because he was the only child, of almost paralytic parents and could not leave the Center. He added the whole thing went much against his own wish and desire and was, further, contrary to his background which included university years at the University of Redlands, California and no prior residence in Japan. He concluded that he hated the Japanese militarists. (This case like all the others above,—and many more—were reported to Washington at the time. Let me repeat. This lad is [268] now in Japan. The boy was sent to internment and went to Japan on the first repatriation vessel). And the injustices of the renunciation program have involved others like him. On the other hand, we also described and sent in record form to Washington, D.C., the variety of special cases, caught by and controlled by organizations and demonstrations resorted to by a tiny pressure-group leadership to get renunciation processed and to achieve removal of young people from Tule Lake. It should be remembered that

Tule Lake was again becoming a relocation center at the behest of Army rescission. Rumors of forced relocation, of a Nisei draft into labor battalions, of assault and violence against those of Japanese ancestry without center confines, of gangsterism and hysteria, both within Tule Lake and outside it, and of group and family needs to remain together in the center, all marked this period. The result was mass renunciation.

We pointed out before this report, and in it, that renunciation at this time was depriving individuals of citizenship who had no other alternative legal status. Mr. Burling's assumption to the contrary is not supported by the legal opinion of the W. R. A. solicitor's staff which was published on this question. We added that in terms of the needs of American policy, we were, by splitting families and confusing status through this law, creating conditions of dependency, both at home and even, after victory, abroad. I do believe that much later, and after repatriation had occurred, the reports back from abroad through the Justice and State Departments and via newspaper accounts of the first Tule Lake repatriation, did not indicate that General MacArthur was getting a particularly helpful, well-adjusted or "disloyal" segment in the Tule Lake population which repatriated. All accounts of Nisei "repatriates" have been pathetic in the extreme. For renunciants who remained there has been job discrimination, as non-citizens, legal barriers, such things as higher differential tuitions at State Universities and the hopeless sense of being "without a country," after being [269] rejected and cast aside by one's country.

At the time we foresaw the more immediate danger of immobilizing the large segment of the center population, which at Tule Lake with its budget of ten million dol-

lars a year in war-time, represented a needless continuation of the tax burden upon an American public which was diligently supporting the war effort in other and truly significant ways. The danger of continuing at Tule Lake through a freeze of population (made ineligible to relocate) the over-sized and abnormal community which WRA wisely hoped to liquidate over a period of time was here involved. We spoke then, as we had earlier, of the danger, in this respect, of subjecting youth at Tule Lake any longer than necessary to the romantic and unrealistic forces of cultural revivalism. In this respect, we viewed renunciation as a postponement of the assimilating and adjusting processes for youth who were either already thoroughly American or Americanized, or who, as Kibei, might so become only in normal American communities outside center confines. We even indicated such minor factors as the few renunciations premised on fear of possible persecution of close relatives abroad by the Japanese war-time government if perchance the relative at Tule Lake did not renounce. There was the feeling in the center that the State Department (through Spain) could so report.

We generalized to the extent of stating that renunciation was in the same category as the prohibition law (in one sense) which, while well-intentioned, overlooked the social psychologic and economic realities binding upon center population. We even at that time quoted from the famous Burling letter to Mr. Sakamoto, *et al.*, in which Mr. Burling, in a mood of somewhat contradictory or negativistic thinking stated that the Kibei renunciants were many of them, disloyal to Japan, while at the same time, held that their activities were also disloyal to this country. We summarized again and again, the major

point that community pressures, "outside" [270] discrimination, and mass compulsions made the law wholly inapplicable to the conditions of center life. And in a phone conversation with Mr. Myer earlier, we requested that, if possible, the program be called off until Tule Lake had time to stabilize.

I should like to quote other sources, particularly Mr. Burling in his open-letter to Mr. Sakamoto, a letter which has been mentioned several times in this statement. In quoting him, I suppose I feel that the knowledge of Tule Lake Center gained by myself and my staff of sixteen research aides, over a three-year period, argues for the setting aside of the renunciation law in its application to the abnormal and confused setting of Tule Lake in which both coercion and duress were major factors. Mr. Burling, at the time and in the course of the same program which I am criticizing, stated that:

"Not only are the leaders . . . traitors to the country of their birth, but it is very doubtful whether they are truly loyal to Japan. A large number of the leaders were Kibei who left Japan after 1937 . . . Ever since that time there has been compulsory military service in Japan. Of course, few people left Japan who were actually drafted but many of the young men who were 17, 18 or 19 in those years left one jump ahead of the draft. . .

"Some of the young men admit they left Japan during the fighting in China, but say they are now going back on an exchange ship and fight. There is reason to doubt their sincerity. In the first place, while they were making those assertions it looked

to everyone as if there would be no more exchanges during the war. . .” (Dated January 18, 1945) [271]

If Mr. Burling is doubtful as to the question of the loyalty of this leadership clique, many of whom voluntarily repatriated to Japan, it would seem to me a fortiori that the average Nisei renunciant, who never repatriated, who had never been to Japan, and who knew nothing of its economic, social or psychologic life, could hardly be accused in ex cathedra fashion either of disloyalty or of renouncing the only citizenship he or she had in a setting of non-coercion and in a rational and discriminating frame of mind.

In conclusion, I should like to quote from two sources on the renunciation program, neither of which has reference to my own work. The first is again from Mr. Burling's statement in the letter to Mr. Sakamoto of the pressure-group, which Mr. Burling dated January 18, 1945, at the height of the renunciation program: (p.2)

“I am well aware that your two organizations have put pressure on residents of this center to assert loyalty to Japan, and that in a number of cases physical violence was employed.”

The second is from Professor Dorothy S. Thomas' book, The Spoilage, (University of California Press: 1946, 388 pps): (p. 361)

“Many of them have since left the country . . . to take up life in defeated Japan. Others will remain in America, in the unprecedented and ambiguous

status of citizens who became aliens ineligible for citizenship in the land of their birth . . . Their parents had lost their hard-won foothold . . . in America. . . . They had become terrified by reports of the continuing hostility of the American public, and they had finally renounced their irreparably depreciated American citizenship." [272]

If further evidence of the complex of causes leading to renunciation is needed, it may be found, in part, elsewhere in this volume The Spoilage: for fears of violence awaiting the resident who relocated, pages 345-6; for the affective appeal of renunciation as an escape from insoluble problems, pages 347-349; for the family and community pressures applied to immature youth, pages 351-355; and for the total confusions occasioned at Tule Lake by the factors of governmental duress, rumors, center conflict, disharmony and violence, isolation and inescapable fears, my section in the official government publication called "Impounded People," United States Department of the Interior, Government Printing Office, the section called "Confusion in Tule Lake," pages 208-217, and issued in 1946.

MARVIN K. OPLER

Subscribed and sworn to before me this 7th day of August, 1947.

(Seal)

W. H. NORRIS

Notary Public in and for the County of San Joaquin,
State of California. [273]

[Title of District Court and Cause]

AFFIDAVIT OF DR. JOHN ALDEN.

State of California

City and County of San Francisco—ss.

John Alden, being first duly sworn deposes and says that: This affidavit is written in response to request for a psychiatric opinion as to the mental state or condition of certain persons of Japanese ancestry at the time they applied for a renunciation of their United States citizenship, and is based on information obtained from a 45-page affidavit made by John L. Burling, a former employee of the United States Department of Justice, upon such general knowledge concerning the Relocation Centers and related matters as was made public at the time, and is centered around a psychiatric viewpoint and experience.

One of the questions which is raised and discussed in the above-mentioned affidavit, is whether or not those persons who applied for renunciation of their citizenship were acting under duress. It is apparent that the only definition of duress which [274] is considered is the application of physical force or the immediate fear of great bodily harm. From a psychiatric standpoint, there is a serious objection to this definition of duress. It is well known that man is a gregarious and social being, and that moral pressures of the group in which one resides is usually of even greater influence on the actions and decisions of an individual than is the actual fear of bodily harm. It

seems apparent that in a group such as was constituted by the Japanese in the various relocation centers, cut off from most of the contact with the outside world, and feeling themselves alone in a hostile country, the strength of these social or group pressures would be even greater than under more normal circumstances. Under these circumstances, it would be normal and natural for an individual to go along with the weight of opinion of the group, or even with the opinion of the most vocal members of the group, whether or not this constituted a majority opinion. In fact, under these circumstances, it would only be the queer or abnormal individual or the individual imbued with more than the usual amount of idealism, who would be able to resist the pressure of the group. This is true just as in the usual social group outside of relocation centers. It is only the queer or mentally deranged individual who holds opinions at marked variance from society as a whole, such as for instance, that the world is flat. The interaction of one person upon another and the building up of mass opinions in this manner, lead in a natural course of events to the development of a real mass hysteria, and it is noted that the presence of such mass hysteria was well recognized by the writer of this affidavit and by the other members of the Relocation Authority whose opinion he cites.

From a psychiatric standpoint, I believe it may reasonably be said that a person acting in response to such a mass hysteria, even though he be otherwise a normal individual, is no more responsible for his actions and is no

more capable of [275] judging the nature and consequence of his actions, nor the difference between right and wrong, than if he were himself mentally deranged.

The suggestion of a possible other source of pressure is found in the statement made in the affidavit to the effect that the authorities responsible for the relocation were somewhat concerned with the constitutional and legal implications of imprisoning American citizens against their will, and looked upon these renunciations of American citizenship as a means of avoiding this legal and constitutional difficulty. It is therefore possible that many of the Japanese sensed or in some way felt the genuine desire on the part of the authorities to have them sign these renunciations, and that to some extent they had a conscious or unconscious desire to accede to the wishes of those who are in authority over them.

I note on page 32 of the affidavit the following statement: "Form letters were written to such persons explaining that it was not within the power of the Attorney General to restore citizenship once lost through renunciation, and that the renunciation itself was valid because it had been made in the absence of coercion and with a clear understanding of what was being done." It seems to me that there are two fallacies in this statement. First, the renunciation was not done in the absence of coercion if we consider the moral and social pressures as well as physical threats, and second, that it was not done with a clear understanding of what was being done, as it appears from other statements in this affidavit that the Japanese

were given to believe by signing this renunciation they would be able to return to Japan, and since they had no information as to the true state of Japan or no way of looking into the future and knowing what would happen at the outcome of the war. Therefore, it cannot be said that they had a clear understanding of what [276] was being done.

It is my opinion, as a psychiatrist, accordingly that persons of Japanese descent detained at the Tule Lake Relocation Center, under the conditions and circumstances described in the affidavit of John L. Burling in renouncing their American citizenship, were not acting fully and voluntarily but, on the contrary, were acting under mental duress.

JOHN ALDEN

Subscribed and sworn to before me this 6th day of August, 1947.

(Seal)

CLARA E. HAY

Notary Public in and for the County and City of
San Francisco, State of California [277]

AFFIDAVIT OF DR. FRITZ KUNKEL

State of California

County of Los Angeles—ss.

Fritz Kunkel, being first duly sworn, deposes and says:

That said affiant is a graduate of the University of Berlin with an M. D. Degree therefrom. That said affiant is presently employed on the staff of the First Congregational Church in Los Angeles, California as a consulting psychologist. That said affiant was furthermore a Professor for several years at the Institute for Psychotherapy of Berlin, until the year 1933. That said Affiant has furthermore taught psychology at the Pacific School of Religion between the years 1939 and 1941. That said affiant furthermore received his United States citizenship in the District Court of Los Angeles on February 28, 1947.

That these educational backgrounds and experiences are set forth herein by way of qualifications for the statements expressed hereinafter.

Said affiant presently resides at 216¼ South Poinsetta Place, Los Angeles, California.

This affidavit is submitted in response to a request for a psychological opinion as to the mental state or condition of certain persons of Japanese ancestry at the time they applied for a renunciation of their American citizenship.

This memorandum is based upon a careful reading of the book entitled "The Spoilage," published by the Uni-

versity of California Press and written by Dorothy Swaine Thomas and Richard Nishimoto, particularly the Chapter dealing with the renunciation commencing at Chapter 13, pps 333 et seq.

It is my opinion based upon this book that the issue of the various fears, apprehensions and pressures to which the persons of Japanese ancestry were subject at the Tule Lake Center during the [278] entire renunciation proceedings were such that it can be said from a psychological standpoint the residents in general did not possess mental freedom but on the contrary were subject to circumstances that were inherently coercive in nature. Although it was not clearly shown from a reading of this chapter that there was any direct threats of physical injury upon each individual at the precise moment when they each renounced their citizenship before a hearing officer of the Department of Justice, it can be said that the turmoil, the threats, the mass hysteria aroused by pro-Japanese elements, particularly the Hoshidan, which was especially active during this period, was such that those apprehensions pervaded each individual's mentality at that moment. Such mentality consequently cannot be considered to be of a free and voluntary matter but can be said to be that of undue influence.

Furthermore, since the individual residing in the center generally wished to do that which was acceptable to the community as a whole, moral pressures brought by parents, spouses, neighbors and friends had to some degree

an influence on the actions and decisions of the individual renunciant.

One murder and a series of severe beatings of other residents, plus the threats uttered by members and leaders of the pro-Japanese association, with the further knowledge on the part of the residents that they could not escape from the community in order to escape from these pressures, undoubtedly brought about a feeling of frustration, hopelessness, disillusionment which naturally aided in the acts of these individuals.

It may thus be said that when a person acts under such mass hysteria, especially under extra-ordinary conditions such as at Tule Lake Center that such a person should not be held responsible for his actions and the same individual cannot be said to have had that free and voluntary will for which he should be responsible.

FRITZ KUNKEL M.D.

Subscribed and sworn to before me this 5th day of August, 1947.

(Seal)

FRANK F. CHUMAN

Notary Public in and for said County and State. [279]

AFFIDAVIT OF MIYE MAE MURAKAMI

State of California

County of Los Angeles—ss.

Miye Mae Murakami, being first duly sworn, deposes and says:

That she presently resides at Route 1, Box 212, in Torrance, California; that she is 29 years of age, born in Mountain View, California and is the mother of 4 children, Michael Koichi, age 3½; Makoto Ronald, age 2½; Gerald Junzo, age 1½ and Robert Shiro, age 18 days. That said affiant attended the public schools at Menlo Park, California, after which said affiant assisted her parents on a farm located in Santa Clara County. That said affiant was married on September 16, 1939, in Santa Monica, California, where she resided until her evacuation on April 28, 1942 to Manzanar Relocation Center; that on February 26, 1944, said affiant was transferred to the Tule Lake Center due to the fact that her husband had applied for repatriation. That said affiant's application for renunciation was submitted May 1945, since at the time it seemed to affiant that such action was the safest to take under the circumstances, as will be set forth further in detail below. That said affiant received her notice of approval of renunciation in January, 1946, said notice however being dated as of August, 1945. That as a result of a mitigation hearing said affiant was released on March 5, 1946, when said affiant went to Hawthorne, later to Santa Monica, California, later to the Burbank Trailer

Court and presently in Torrance, California where said affiant still resides.

That said affiant renounced her citizenship due to an erroneous and insidious report prevailing throughout the Center that unless an American citizen Japanese renounced his or her citizenship, that said citizen would not be able to join his or her family or spouse when said Japanese subjects were to be repatriated to Japan. That said affiant lived during the entire renunciation procedure in Block 75 of Ward 8, which was considered to have been the most rabid pro-Japanese section of the entire Tule Lake Center; that said affiant lived daily in an atmosphere of fears, threats, [280] and scares stirred up by powerful gangster-like hoodlums of pro-Japanese leaders; that at several times said affiant felt her own life in danger when, even in the supposed privacy of the women's wash-room, groups of rough looking, tough talking men would invade such rooms and threaten to assault any women who had not yet renounced their citizenship. That said affiant furthermore lived in a constant atmosphere of assaults, battery, stabbings and constant pressure from relatives who coerced other relatives into renouncing their citizenship. That said affiant furthermore lived in the midst of neighbors who had been persuaded to renounce their citizenship and who in turn were proselyting their other neighbors to renounce their citizenship. That said affiant had heard of the mysterious murder of a leader of a Japanese community and had further heard members and leaders of the pro-Japanese gangs threaten by words, acts

and meetings, reports and posters, that other residents would meet the same fate unless they renounced their citizenship. That the extremely tense situation was further fanned by exaggerated reports coming into the center from the outside world of the burnings, raids, bombings and assaults to all Japanese. That said affiant had completely lost any sense of perspective or balance in her thinking processes from the treatment which had been given her and all others in the Center and from the summary evacuation from homes and businesses; that said affiant realizes that it was such an irrational state of mind, accompanied by several years detention and isolation and insecurity, threats and fears which finally resulted in pressure of the pro-Japanese groups depriving said affiant of her own free will, and being bound by said pressure to renounce her citizenship, contrary to her best judgment.

MIYE MAE MURAKAMI

Subscribed and sworn to before me this 1st day of August, 1947.

(Seal)

FRANK F. CHUMAN

Notary Public in and for said County and State

My Commission expires Mar. 28, 1950. [281]

AFFIDAVIT OF TSUTAKO SUMI

State of California

County of Los Angeles—ss.

Tsutako Sumi, being first duly sworn, deposes and says:

That said affiant presently resides at 1926 Beloit Street in West Los Angeles; that said affiant is 32 years of age, born October 13, 1914 in Los Angeles, California; that said affiant attended public schools in the City of Los Angeles. That said affiant was evacuated in April, 1942, from her home in Los Angeles to the Manzanar Relocation Center from whence said affiant was transferred to the Tule Lake Center on February 27, 1944, as a result of her husband having applied for repatriation. That said affiant applied for her renunciation in March, 1945, which application was approved on October 8, 1945. That after a mitigation hearing, said affiant was granted a clearance and relocated to Southern California on February 26, 1946.

That said affiant resided in Block 75, Ward 8 in the Tule Lake Center, which is considered to have been the most rabid pro-Japanese block and ward in the entire Center. That said affiant is the mother of three children of the ages of 12, 10 and 4 respectively. That due to the fact that said affiant's husband was a Block Manager of Block 75, that under the rules and regulations of the War Relocation Authority pertaining to Block Managers, that said affiant's husband was not eligible to be a member of any group or organization including the pro-Japanese

Hoshidan. That said affiant lived in a atmosphere of fears, threats, apprehensions, wild distorted reports and rumors. That in their attempts to force everyone in the block and ward to renounce their citizenship the pro-Japanese association Hoshidan constantly applied tremendous pressure upon her husband to force him to coerce his wife, the affiant, to renounce her citizenship. That said affiant furthermore was cognizant of several beatings which had been imposed upon residents who had dared to [282] oppose the preachings of the Hoshidan to have the residents renounce their citizenship. That each of such beatings was followed by wild rumors that the victim had been a stool pigeon or a non-conformist or a traitor to the Japanese nation, which activities were calculated and succeeded in keeping the Tule Lake Center in an almost perpetual state of turmoil. That furthermore, none of the assailants were apprehended by the police or the internal security personnel which further heightened the fears and apprehensions of bodily injury on the part of said affiant, as well as the rest of the residents of the center. That said affiant and other residents were so frightened that in some instances, particularly after several beatings, no one even dared leave their apartments for several days. That the constant militaristic demonstrations on the part of the pro-Japanese association, which later degenerated into gangsterism and hoodlumism was still not adequately coped with by the Center Administration. That furthermore said affiant feared that if she and her husband together with their children took up resi-

dence outside the center, that they would meet grave economic hardship and discrimination. Said affiant further feared physical violence after they relocated. Said fears were constantly aggravated by exaggerated reports circulated by the above mentioned pro-Japanese association which resulted in mass anxiety and mass hysteria. That as a result of the detention and isolation, and the pressures of pro-Japanese groups upon said affiant's husband to have said husband force said affiant to renounce her citizenship, and furthermore, said affiant's husband, after having been the subject of ridicule and unwarranted malicious threats to his personal integrity and character, that said husband finally went against his will with the result in the end of forcing said affiant, against her will, to renounce her citizenship. Said affiant at no time willingly submitted to the formal act of applying for her renunciation papers.

TSUTAKO SUMI

Subscribed and sworn to before me this 1st day of August, 1947.

(Seal)

FRANK CHUMAN

Notary Public in and for said County and State

My Commission expires Mar. 28, 1950. [283]

AFFIDAVIT OF MUTSU SHIMIZU

State of California

County of Los Angeles—ss.

Mutsu Shimizu, being first duly sworn, deposes and says:

That she presently resides at the Winona Trailer Project in Burbank, California, Trailer No. 68. That said affiant is 33 years of age, born July 4, 1914. That at the age of 6 years or thereabouts, said affiant went to Japan and entered a girl's school which she attended until she was 16 years of age. That said affiant returned to the United States in 1931 and soon after her return attended the public school in Venice, California.

That after the evacuation order issued by General DeWitt in February, 1942, she was moved to several places, including a change of domicile from Venice to Hawthorne, later to San Gabriel, California, and that said affiant was then transferred to the Tule Lake Center; later to the Gila Relocation Center, and in October of 1943, segregated to the Tule Lake Center.

That said affiant is the mother of three children, Yosuke Pat, Hiroko Julia and Yoneko Suzanne. That said affiant applied for her renunciation in December, 1944, and was granted a hearing in January, 1945. That her application was approved by the Department of Justice in October, 1945 and she was later granted a mitigation hearing in November 1945 and permitted to remain at Tule Lake Center, leaving said Center in February, 1946 for Lomita, California, and still later to her present residence at the Burbank Trailer Court, as aforesaid.

That said affiant's renunciation of citizenship was based upon the hysterical atmosphere which existed in the Center at the time of the renunciation hearings. That she had heard of a murder committed upon a resident of the

Center which was immediately followed by threats from pro-Japanese groups that other residents [284] would meet the same end if they did not renounce. That furthermore, the summary evacuation from her home in Venice, California, where she had lived for several years, had placed her in an unsteady economic status. That the constant vicious anti-Japanese propaganda from the newspapers, radio and other means of communication outside the Center which was allowed to enter the Tule Lake Center terrified her so far as conditions on the outside and the fear of physical violence from Caucasians after they relocated. That the pro-Japanese patriotic societies which were permitted to exist in the center had constantly stirred up the emotions, fears and anxieties of the residents. That said affiant constantly remained in such condition, with constant pressures, compulsions, influences, coercion, against her better judgment, which resulted in depriving said affiant of any voluntary willingness to renounce of the part of said affiant. That the community atmosphere in which said affiant lived was such that she considered herself an outcast unless she renounced her citizenship. That said affiant would not have renounced but for these conditions and influences which bound her mental processes to the degree that said affiant was not able to realize the gravity of her step in renouncing her citizenship.

MUTSU SHIMIZU

Subscribed and sworn to before me this 31st day of July, 1947.

(Seal)

FRANK F. CHUMAN

Notary Public in and for said County and State

My Commission expires Mar. 28, 1950.

[Endorsed]: Filed Jul. 1, 1947. Edmund L. Smith,
Clerk. [285]

[Minutes: Monday, August 18, 1947]

Present: The Honorable Charles C. Cavanah, District Judge.

For hearing motion of defendants, filed July 1, 1947, for summary judgment in favor of defendants, 'and for hearing motion of plaintiffs for a summary judgment, advanced for hearing from Aug. 25, 1947, to this date; Frank Chuman, Esq., and A. L. Wirin, Esq., for plaintiffs; Ronald Walker, Ass't U. S. Att'y, for defendants;

Attorneys Wirin and Walker each makes a statement relative to affidavits.

At 10:48 A. M. Attorney Walker argues to the Court.

At 11:44 A. M. court recesses until 2 P. M. At 2 P. M. court reconvenes and all being present as before, Attorney Walker argues further. At 2:53 P. M. Attorney Wirin argues to the Court. Court declares a short recess.

At 3:45 P. M. court reconvenes and all present as before, Attorney Wirin argues further. At 4:17 P. M. Attorney Chuman argues to the Court; Attorney Wirin argues further; Attorney Walker argues further.

Court orders both motions submitted. [286]

[Title of District Court and Cause]

STIPULATION RE HEARINGS ON MOTION FOR
SUMMARY JUDGMENT AND SUBMISSION
OF CASE ON THE MERITS

It is hereby stipulated by and between the counsel for the respective parties hereto as follows:

1. That the hearing upon plaintiffs' motion for summary judgment heretofore noticed for August 25, 1947, may be advanced on the calendar and heard in conjunction with defendants' motion for summary judgment on August 18, 1947.

2. That the affidavits filed in support of each motion for summary judgment may be considered as filed in opposition to the adversary motion.

3. That plaintiffs may file subsequent to the hearing an affidavit by Abe Fortas upon the material described on page 35 of the affidavit of John L. Burling on or before September 8, 1947.

4. That the hearing upon the motions for summary judgment may be deemed a trial upon the merits of the above cause and that the various affiants would, if called, testify to the factual matter set forth in their respective affidavits. That such factual matters contained [287] in such affidavits as are competent, material, relevant, and not inadmissible as being the opinion or conclusion of the respective affiants be deemed as evidence adduced at the hearing of said case upon the merits.

Dated: This 21st day of August, 1947.

A. L. WIRIN and FRED OKRAND

By Frank F. Chuman

Attorneys for Plaintiffs

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

Attorneys for Defendants

It Is So Ordered this 22 day of August, 1947.

CHARLES C. CAVANAH

Judge, United States District Court

[Endorsed]: Filed Aug. 22, 1947. Edmund L. Smith,
Clerk. [288]

[Title of District Court and Cause]

AFFIDAVIT

District of Columbia—ss:

Abe Fortas, being first duly sworn, deposes and says that he wrote to Mr. Ernest Besig the letter bearing his signature, a photostatic copy of which is attached to this affidavit.

ABE FORTAS

Subscribed and sworn to before me this 27th day of August, 1947.

(Seal)

EDITH W. CALLAHAN

Notary Public, D. C.

My Commission expires February 29, 1948.

Service accepted this 2nd day of September, 1947.
Ronald Walker, Asst. U. S. Atty. [289]

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Secretary
Washington

Mr. Ernest Besig,
Director, Northern California Branch,
American Civil Liberties Union,
216 Pine Street,
San Francisco 4, California.

My dear Mr. Besig:

This is in further reply to your letters of July 6 and July 17 concerning detentions at Tule Lake for violation of the special project regulations prohibiting Japanese nationalistic activities. We have completed our investigation and in this letter I shall report rather fully our findings and conclusions.

Basically there are, I believe, three points that concern you: (1) the need for and hence the reasonableness of the special project regulations, (2) the apparent lack of any limitations upon the discretion of the Project Director in enforcing the regulations, and (3) an apparent abuse of authority in imposing certain sentences involving minors. I should like to take up each of these points in turn.

1. When Tule Lake became a segregation center, WRA adopted a policy of permitting evacuees to operate Japanese language schools and engage in Japanese cultural activities, in recognition of the fact that many of the residents sincerely desired repatriation to Japan and that their children should be given an opportunity to become acquainted with Japanese culture. Unfortunately this policy was utilized as an entering wedge by a number of

strongly pro-Japanese evacuees for the formation of virulently pro-Japanese nationalistic organizations. These evacuees were motivated chiefly by the desire to attain standing in the eyes of the Japanese government and obtain positions of leadership in the colony. To this end they instituted Japanese-type military drill, mass exercises, bugling, wearing of Japanese insignia, emperor worship ceremonials, pro-Japanese demonstrations, and other purely Japanese nationalistic activities designed not to serve any cultural purposes but to instill in the Tule Lake people a fanatical devotion to the principles of the militarist regime in Japan. By preying on fear of Selective Service they induced parents to exert pressure on their children to join the organizations. In addition they resorted to intimidation, threats of violence and actual violence in coercing residents to join the organizations and participate in their demonstrations. It was primarily due to the pressures of these organizations that over 80 per cent of the citizens eligible to do so applied for renunciation of citizenship this past winter. When Department of Justice representatives arrived at Tule Lake to conduct hearings on applications, the organizations stepped up their demonstrations and their pressures on the applicants. Undoubtedly many of the applicants were in the grip of the emotional [290] hysteria created by these organizations, or actually acting under fear of violence, in confirming their desire to renounce citizenship during the hearings. The general uniformity of the answers given indicated that the applicants were well coached. These facts are reflected in an increasing volume of cancellation requests from Tule Lake renunciants, who frankly state in many cases that they were acting under compulsion in renouncing their citizenship.

On January 19, 1945, Mr. John Burling, special representative of the Attorney General conducting renunciation hearings at Tule Lake, addressed a letter to the heads of the two principal organizations setting forth the position of the Department of Justice toward the activities of the organization. A copy of that letter is enclosed (Exhibit I). In that letter Mr. Burling, speaking for the Attorney General, strongly condemned the activities of the organizations and stated that they must stop. Despite this letter, which was widely circulated in the center, the activities of the organizations did not abate. In order to maintain peace and order, protect the Tule Lake residents who were loyal to this country or who disagreed with the aims and objectives of the organizations, and to stop the subversive activities of these groups, two steps were taken. One was the transfer of the known alien leaders of the organizations (including persons who had renounced their citizenship) to internment camps. The other was the adoption of the special project regulations prohibiting the overt demonstrations which were fundamental to the organizations' programs.

As a result of these two steps the organizations have lost much of their prestige. Many evacuees who joined the organizations have notified WRA of their withdrawal from membership. Opposition to the organizations has come out of hiding. Nevertheless the influence of the organizations is still strong, and their activities continue. The Director of the War Relocation Authority believes enforcement of the special project regulations is still necessary in order to maintain law and order at Tule Lake and guarantee to the law-abiding residents the right to live in peace and free from fear of violence and recrimination for failure to assert aggressive loyalty to Japanese war

aims. In the light of the facts I am unable to disagree with his conclusion.

2. As you state, the special project regulations assign no definite penalty for the prohibited acts. These regulations were, however, issued under and subject to the provisions of WRA internal security regulations applicable to all centers (Exhibit II). These over-all regulations prescribe procedural safeguards with respect to arrests and prompt arraignment and hearing. The right of the accused to counsel is guaranteed and the Project Director is specifically responsible for seeing that a complete case is fairly presented. The maximum penalty that can be imposed by a Project Director for commission of any one offense is imprisonment for not more than three months. In addition, any evacuee may of course carry his case directly to the Director of the Authority if he believes that he has been unjustly dealt with, and during the course of center operations a number of evacuees have done so.

Our investigation has revealed no departure from these over-all regulations by the Project Director in the enforcement of the special project regulations. While the sentence imposed in a number of cases has exceeded 90 days, this has [291] been because more than one offense was committed. We have found no instance in which the sentence imposed exceeded 90 days on any one count. Out of 454 persons apprehended for open violation of the special project regulations, 424 have been released without further action, after lectures on their behavior. Eleven received sentences ranging from 90 to 270 days. The remainder received sentences of 90 to 360 days, with 60 to 250 days of the sentence suspended on condition that they not violate the regulations after release. It has been

the general practice to carry out sentences of imprisonment only in cases where the violator is recalcitrant and states that he will continue to disregard the regulations if released. I believe that these facts reflect sane and considerate handling of this difficult problem.

3. Four recent cases of violation, including the two you mention in your letter of July 6, have involved persons under 18 years of age. Reports on these cases are enclosed (Exhibit III). Despite the youth of the offenders, the facts in the cases do not indicate in my judgment that the sentences imposed were unnecessarily harsh or that the cases could have been handled satisfactorily in some other manner.

None of the four youths involved in these cases has been classified as a detainee by the Western Defense Command or by the Department of Justice. So long as they wish to remain residents of the center they will be required under WRA regulations to serve their sentences. They are, however, free at any time to leave the center even if they are serving a sentence for violation of center regulations. The War Relocation Authority does not maintain that it has power to detain any person who is eligible to leave the center and wishes to do so, even if he is being disciplined for violation of project regulations. Administrative Notice No. 207, which prescribes this policy, is enclosed (Exhibit IV). I should also point out that the Authority could legally expel any such person from a center, although as a matter of policy this power is exercised only in aggravated cases.

In summary, I am unable to conclude on the basis of our investigation that the special project regulations are unnecessary, that the WRA procedures for enforcement

of the regulations are unreasonable, or that the Project Director at Tule Lake has exceeded his authority or been other than temperate under the circumstances in enforcing the regulations. I do not, of course, believe that my judgment should interfere with any action that the American Civil Liberties Union might deem appropriate under the circumstances. I should like to point out, however, that action such as you propose will doubtless be widely publicized. Enemies of the evacuees on the West Coast will undoubtedly play up the activities of the pro-Japanese organizations which will be the basis for the Government's defense. So far as the long run interests of persons of Japanese ancestry in this country are concerned, I think that the contemplated action would be a serious mistake.

Sincerely yours,

ABE FORTAS

Under Secretary

[Endorsed]: Filed Sep. 2, 1947. Edmund L. Smith,
Clerk. [292]

[Minutes: Friday, September 5, 1947]

Present: The Honorable Charles C. Cavanah, District Judge.

This case having heretofore been tried before Judge Cavanah, and having thereafter been ordered to stand submitted, and the Court having duly considered the same, now causes its Opinion to be filed, and pursuant thereto, the Court finds in favor of the plaintiffs. [293]

[Title of District Court and Cause]

OPINION

Cavanah, District Judge.

The plaintiffs of Japanese ancestry born in the United States and residents of the State of California bring this action to cancel and declare null and void their renunciations of citizenship made by them when they were confined and detained in Relocation Centers, with a large number of Japanese who were not citizens of the United States during the period of the war.

They claim to be citizens and nationals of the United States by birth and assert that their renunciations were not of their free and voluntary act but were the result of undue influence, mistake, duress and coercion. Jurisdiction is vested by Section 903, Title 8 U. S. C. A., wherein it is provided that any person who claims a right or privilege as a national of the United States is denied such right by any department or agency upon the ground that he is not a national of the United States, may institute an action in a District Court of the United States for a decree declaring him to be a national of the United States.

The applications for renunciations were made under Section 801 of the Nationality Act of 1940, authorizing them to be made in compliance with law. [294]

The case, under stipulation, is before the court upon the merits and the record consists of the pleading and affidavits filed by the parties.

When considering the case, we must keep in mind that each of the plaintiffs' rights are to be considered and determined separately and according to the facts pertaining

to them. While the question of whether the government had the power to confine the plaintiffs in the Relocation Centers is not presented, yet, it seems pertinent to consider the decision of the Supreme Court in the case of *Ex Parte Endo*, 323 U. S. 283, a Japanese, claiming citizenship by birth in the United States, as relating to the situation of the plaintiffs were in and their conduct before and after confined in the Relocation Centers, upon the thought as to whether they were loyal abiding citizens or violating any laws before and at the time of their applications for renunciations, or it was for the protection of the war effort against espionage and sabotage, as bearing upon their state of mind as to duress and coercion, as the Supreme Court held that the War Relocation Authority is without authority to subject to its leave procedure loyal and abiding citizens of the United States, as the purpose of the law was the protection of the effort against espionage and sabotage and there is no basis for keeping loyal evacuees of Japanese ancestry in custody on the ground of community hostility.

The record here presents no problem of disloyalty, violations of law, or espionage and sabotage, and when not, their confinement is repugnant to the basis of liberty, and should be considered only as to whether the fundamental principles of law are applicable as to age, mistake, duress or coercion existed which dominated and influenced their minds is not acting freely and voluntarily at the time the plaintiffs made their applications for renunciations. This is the primary thought to be considered in the present case.

The inquiry then is, under the record relating to these plaintiffs, what are the facts relating to each of them separately and the situation existing at the Center? [295]

The plaintiff, Albert Yuichi Inouye, was a young boy of the age of seventeen years at the time he signed his application for renunciation and born in the United States. His parents were of Japanese ancestry and subject to being deported. He was the only son and had never been in Japan or had any feeling of loyalty to that country. He was with his family when they were evacuated from Los Angeles to the Manzanar Relocation Center in California and thereafter transferred to Santa Fe Detention Center, New Mexico, where he remained until his release. He was not disloyal to the United States or violated any law or performed any act or conduct that could be considered espionage and sabotage. Prior to his evacuation he attended the public schools and was active in the Christian Church, Y.M.C.A. athletics, participated in the contribution to the drives for infantile paralysis, tuberculosis, waste paper and purchased war savings stamps. While at the Relocation Center he was active in the American Red Cross project and went to school there. While seventeen years of age in March, 1945, he applied for renunciation and signed the application form furnished by the Department of Justice on July 9, 1945, and withdrew his renunciation on August 23, 1945, which was of no avail. While at the Relocation Center he was accorded another hearing and after proof of his loyalty to the United States had been evident was released in April, 1946. Soon after his release from the Center he volunteered for the United States Army, was ordered to report for overseas duty on November 2, 1946, and on November 16, 1946 for Military Intelligence school where he is presently stationed.

At the hearing before the government agent and what had occurred before, it appears clear that the youth

yielded to parental compulsion and a clear case of "parental influence" in order to hold the family intact. In his application to withdraw his renunciation, he states that his renunciation was done under mistake and influence, not his free will and that he was a minor. [296]

Two thoughts are presented relating to his renunciation: First, can one born in and a national of the United States legally renounce his citizenship at the age of seventeen years? Section 801 of the Nationality Act of 1940 is silent as to the age when a person may renounce his citizenship. A minor being one under the age of twenty-one cannot, by his activities, be legally deprived of his civil rights but the defendants contend that as Section 803 of the Nationality Act of 1940, provides that no national under eighteen years of age can expatriate himself under Subsections (b) to (g) inclusive, Section 803 requirement of eighteen years should apply to Subsection (1) of Section 801. It will be observed that both Section 801 (1), under which the renunciations were made, and Section 803 were enacted at the same time and no mention as to age is made in Section 801, at which a person who is a national of the United States by birth shall lose his nationality, and the mere fact that a national eighteen years of age can expatriate himself under Section 803 was only to lower the age at which expatriation could be affected except under Section 801, as Section 803 (a) enacted at the same time as Section 801 (a) states "except as provided in sub-sections (g), (h) and (i) of Section 801, no national can expatriate himself or be expatriated under this section while within the United States or any of its outlying possessions". Therefore, Section 803 does not apply as it relates to different instances than the provisions of the Act under which these renunciations were

made when applied to the general principle requiring one to have reached his majority. The requirement of age which renunciation of citizenship can be made should not be left to conjecture in face of Congressional silence and the rights of citizenship are not to be destroyed by ambiguity. *Perkins v. Elg*, 307 U. S. 325.

Furthermore, these plaintiffs have not expatriated themselves. To constitute an expatriation there must be an actual removal from the country of which the individual is a citizen or a subject, made voluntarily by a person of full age.

The Fourteenth Amendment of the Constitution declares: "All [297] persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside." In *Ex Parte Ching King*, 35 Fed. 354, where a child born in the United States of Chinese parents was an American citizen and his status thus acquired under the Constitution of American citizenship "can only be lost or changed by the act of the party when arrived at majority, and the consent of the government".

In the case of *United States ex rel. Baglivo v. Day*, 28 Fed. (2d) 44, it appears that Baglivo born in the United States was excluded as an alien not in possession of an immigration visa who went to Italy and endeavored to return and while in Italy he was in the Italian Military Service. The court held that: "A native born citizen, who has not attained the age of 21 years, cannot renounce allegiance to the United States."

Therefore, at the time the plaintiff Albert Yuichi Inouye signed his application and its approval by the government, he, being under the legal age the same is void.

The second thought of his claim, being under "parental influence" and was not acting of his own free will and act, brings his status under the principle that where acts of a child done under the domination of the parent and which dominates the mind of the minor or unfair persuasion, it is regarded as induced by unfair persuasion and influence of the minor and is voidable, but it is asserted by the defendants that at the time he signed his application he wanted to go to Japan with his parents, who were subject to deportation. This expression of a boy of the age of seventeen is a natural one not to be separated from his family who was going to a foreign and distant country, if we consider the force and control of human nature and its depressing effects. The results flowing from that parental domination and the acts of fear constitute undue influence, duress and coercion, require them to be declared null and void. They should be considered in the light of the circumstances under which they were performed. Feebleness [298] on one side and overpowering strength on the other imply duress.

We come to the consideration of the other plaintiffs, who were evacuated and confined in Tule Lake Center in California. They were young people when they signed their application for renunciation. The plaintiff, Miye Mae Murakami, born in California, when she signed her application for renunciation was married to her present husband in September, 1939, a Japanese alien, and was evacuated with her family in April, 1942. In February, 1944 she was sent to the Tule Lake Center under the "segregation program" and as a result of her husband having applied for repatriation and reports and statements uttered to her that all American citizens and Japanese aliens would be segregated into different camps re-

ardless of age or marriage. Feeling that it was not necessary to be separated from her husband and in fear of being assaulted unless she did so renounce her citizenship, the strong arm and tactics used by the gang of young disloyal Japanese at Tule Lake Center which kept the ward where she was living in constant state of tension, hysteria and fear, and reports of assaults, stabbings in the dark, compelled her for her own safety and welfare to renounce her citizenship.

The plaintiff, Tsutako Sumi, born in California, married a Japanese alien and is the mother of three children. She and her husband were evacuated in April, 1942, and sent to the Tule Lake Center. After her husband had applied for repatriation, she applied for renunciation and released in October, 1945, from Tule Lake Center. She lived in a block at Tule Lake Center where the rabid pro-Japanese elements were and she lived in a daily atmosphere of fear and threats. Her husband was forced by the pro-Japanese elements to have her renounce her citizenship, which he did by coercion against her will.

The plaintiff, Mutsu Shimizu, born in California, was married in 1938 to a Japanese alien. She and her family were evacuated in 1942 and confined in Tule Lake Center. She is the mother of three children born in the United States. She renounced her citizenship which was approved in October, 1945. Thereafter, she was ordered released [299] from the Center. She says the reason she renounced her citizenship was because of pressure and influence aggravated by threats, killings, stabbings im-

posed upon those who did not renounce. Her husband was an active leader in the pro-Japanese group. Her brothers and relatives had assisted the United States during the war. She states that she did not want to renounce her citizenship.

The War Relocation Authority found that each of the plaintiffs were free of any suspicion of disloyalty to the United States.

We are confronted with the situation at Tule Lake Center where three of the plaintiffs were confined prior to and at the time they made their renunciation. A high degree of excitement and mass hysteria existed. Two groups of Japanese existed, one consisting of Japanese born in the United States and who were not disloyal and guilty of espionage and sabotage or violation of any law, and one consisting of those who were not citizens and pro-Japanese belonging to terror groups of violent activities of assaults, beatings, threats of murder and murder of those Japanese who opposed their policies and activities and who were in danger of physical violence. Those Japanese who spoke against the pro-Japanese were brutally assaulted causing them to be in mental fear, intimidation and coercion when they applied for their renunciation, is clearly revealed by the affidavits and which were the primary and controlling factors in divesting them of their citizenship. Such persons should not be held responsible for their action as it was not their full and voluntary will.

The modern view and true doctrine of duress and coercion is to be tested which results from threats and fear of actual or apparent physical injury or violence producing a state of mind of the injured party is the ultimate fact of whether such person was deprived of the free exercise of his will power. Freedom of will is essential in the exercise of an act which is urged to be binding, and the right of citizenship being an important civil one can only be waived as the result of free and intelligent choice. The mere fact that some of the [300] plaintiffs having stated that they knew the results of their renunciations does not remove the primary force and effect of duress, coercion and undue influence that caused them to renounce.

For the reasons thus stated, the results of the plaintiffs' renunciations having been made under undue influence, duress and coercion and not of their free will and act, and the further thought as to the plaintiff, Albert Yuichi Inouye, not being competent of legal age at the time he made his application for renunciation, who also acted under undue influence, duress and coercion, their renunciations are declared to be null and void and cancelled and they are restored to their rights of citizenship.

[Endorsed]: Filed Sept. 5, 1947. Edmund L. Smith, Clerk. [301]

[Title of District Court and Cause]

STIPULATION FOR SUBSTITUTION OF PARTY
DEFENDANT

Whereas, William A. Carmichael is the successor to the defendant Albert Del Guercio as District Director of the Immigration and Naturalization Service of the United States Department of Justice for the Southern District of California and replaced said defendant Albert Del Guercio on May 12, 1947, and has occupied said office since that time;

It Is Hereby Stipulated between the attorneys for the parties in the above entitled action that William A. Carmichael may be substituted as party defendant in the place and stead of Albert Del Guercio.

Dated this 17th day of September, 1947.

A. L. WIRIN & FRED OKRAND

By Fred Okrand

Attorneys for Plaintiffs [302]

JAMES M. CARTER

United States Attorney

By Ronald Walker

Attorneys for Defendants

ORDER

Upon the reading of the stipulation of the attorneys in the above entitled action and good cause appearing therefor, It Is Hereby Ordered that William A. Carmichael is substituted as party defendant in the place and stead of Albert Del Guercio.

Dated: September 18th, 1947.

CHARLES C. CAVANAH

Judge, United States District Court

[Endorsed]: Filed Sep. 18, 1947. Edmund L. Smith,
Clerk. [303]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on August 18, 1947, in the courtroom of the Honorable Charles C. Cavanah, Judge, presiding without a jury, no jury having been requested, A. L. Wirin and Fred Okrand by A. L. Wirin and Frank Chuman, appearing as attorneys for plaintiffs, and James M. Carter and Ronald Walker by Ronald Walker, appearing as attorneys for defendants, and evidence having been introduced on behalf of all parties, and the Court having considered the same and heard the arguments of counsel and being fully advised, makes the following:

FINDINGS OF FACT

1. Plaintiffs and each of them are of Japanese ancestry born in the United States and are residents of the Southern District of California.

2. Defendant Albert Del Guercio was the duly appointed and acting District Director of the Immigration and Naturalization Service of the United States Department of Justice for the Southern District of California and was the head of said agency for said district of Southern California until May 12, 1947. William A. Carmichael on May 12, 1947, succeeded to the office formerly held by defendant Albert Del Guercio. Defendant Tom C. Clark is the Attorney General of the United States and as such is the head of the United States Department of Justice. [305]

3. The plaintiffs by virtue of their birth in the United States ~~and their United States citizenship~~ [A.L.W.]

claim to be nationals of the United States and further claim the rights and privileges of nationals of the United States; the defendants deny that the plaintiffs are nationals of the United States and further deny the plaintiffs' rights and privileges as nationals of the United States and have announced that plaintiffs do not possess United States nationality nor citizenship.

4. On July 1, 1944, Congress amended Section 401 of the Nationality Code (Title 8, U. S. C. A. Section 801) by adding an additional ground for loss of citizenship as follows:

"A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by * * * (i) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war, and the Attorney General shall approve such renunciation as not contrary to the interests of national defense."

5. Plaintiff Albert Yuichi Inouye was born on May 30, 1927, in Berros, San Luis Obispo County, California. He attended the public schools in West Los Angeles, California. On April 28, 1942, he was evacuated with his family from West Los Angeles to the Manzanar Relocation Center. Prior to his evacuation, he was active in the Y. M. C. A., the Christian church, athletics, and had also participated by contributing to the drives for infantile paralysis, tuberculosis, waste paper, and purchased war savings stamps. While at the Manzanar Relocation Center, he was active in the American Red Cross

project and the U. S. O. and went to school there. On March 7, 1945, while of the age of seventeen (17) years, he applied for an application form for renunciation of citizenship as provided for under Section 801 (i) of the Nationality Act of 1940 [306] as furnished by the Department of Justice. He was granted a hearing on his renunciation on July 9, 1945, and further signed a renunciation of United States nationality form of the Department of Justice on July 9, 1945, which was approved by the Attorney General on August 7, 1945.

On August 23, 1945, he transmitted a letter to Attorney General Tom C. Clark in Washington, D. C., expressing his intention of withdrawing his application for renunciation of his United States citizenship. The letter is forth in toto as follows:

	August 23, 1945
Hon. Tom Clark	(Office of the)
Attorney General of the United States	(Received)
Washington 25, D. C.	(August 27, 1945)
Dear Sir:	(Attorney General)

I want to withdraw my application for renunciation of my American citizenship, and I disaffirm that application for the reason that I made it originally before I was 18 years of age, for the reason that I am still a minor under the age of 21 years, and for the reason that I executed it under a combination of circumstances which amounted to undue influence and mistake. I ask your consideration and your assistance if possible in correcting the situation in which I find myself.

I have received no word that my application has been approved by you, and I hope that this letter will serve to

cancel and withdraw my application before it is approved. However, if, in your opinion, it cannot have that effect, or if you have already approved my application, I do want to disaffirm it for the reasons given. If I should no longer have American citizenship, my position will be particularly unfortunate because under the existing laws I will have no way of regaining my American citizenship through naturalization. I am not a citizen of any other country, and I have no desire to become a citizen of any other country nor is there any [307] other country to which I want to go. Under these circumstances I will be a stateless person, a man without a country, living in my native country without any of the privileges of a citizen and without hope of ever gaining them.

It is true that if this happens it will be my own act, but I can only say that I am not yet a man, and that the circumstances were such that I was under strong pressure and did not know or realize what I was doing.

My parents are alien Japanese, but my father has not been in Japan since 1906, and I have never been there. Therefore I owe no loyalty to Japan and never had any. However, my parents have never been eligible to citizenship, and while they have strong ties with the United States, they have never been able to become part of this country in every sense and therefore they have never been able to break all of their ties with Japan.

The evacuation was a shock to my parents and to me and my sisters. Not only was it a shock but it also caused our family to lose what we had, a car, which was nearly paid for, and a home, which was held in trust for me. This happened while my father was interned, and all of these experience made him feel that there would

be no future for him or my mother, except in Japan. I felt that it was my duty as the only son to go with them and to help get them settled in Japan, but I never had any idea of staying there permanently. I think that my attitude toward going to Japan was brought out quite clearly in the interview I had with Mr. Rothstein. If my parents had not wanted to go to Japan I would not have ever thought of asking for repatriation, and if I had not been influenced by the evacuation and the situation in camp, I know that I would have done everything expected of any other citizen of this country.

The result of our repatriation requests was that none of our family could leave Manzanar, and when the Army began to exclude people individually, they put me on the segregation list and all [308] that I could look forward to was being held here and finally transferred to Tule Lake. The Army officer had talked to me about renouncing my citizenship, and it seemed to me that that would be the next step, so in March, before I was even 18 years old, I made that application. Then I had a hearing in Manzanar on July 9. I had just passed 18 on May 30. I was confused about everything, and so I signed the papers, but I did not realize what I was getting myself into.

I hope that you will help me get out of this situation, and if I cannot, I hope that I will be allowed to relocate with my family, and maybe some day I can earn my citizenship back again.

Very truly yours,

Albert Yuichi Inouye

24-7-1

Manzanar, California

Again on August 28, 1945, he sent a telegram to Tom C. Clark, Attorney General of the United States in Washington, D. C., of his withdrawal of his application for renunciation, which telegram is set forth below as follows:

WESTERN UNION

1945 Aug 28 PM 11 07

TA 50

T. BE589 NL PD-TDPN MANZANAR CALIF 28
ATTORNEY GENERAL UNITED STATES
WASHDC-

I WITHDRAW MY RENUNCIATION APPLICATION AND DISAFFIRM IT BECAUSE OF MY MINORITY AT TIME OF ORIGINAL APPLICATION AND UNDUE INFLUENCE AND MISTAKE. I AM NOT A CITIZEN OF JAPAN OR ANY COUNTRY OTHER THAN THE UNITED STATES AND RESPECTFULLY REQUEST YOUR CONSIDERATION AND ASSISTANCE IN MY SITUATION LETTER FOLLOWS -

ALBERT YUICHI INOUE. [309]

Notwithstanding his withdrawal of renunciation, he was transferred to the Alien Enemy Detention Camp in Santa Fe, New Mexico, on September 8, 1945. On October 10, 1945, he applied for non-repatriation to Japan, and on December 20, 1945, made formal application for a hearing on his application for non-repatriation. He

set forth his desire to remain in the United States for the following reasons:

- "1. At the time of my renunciation I did not know any legal knowledge and realize what I was getting into, because I was a minor under the age of 21 years of age.
- "2. I have never been to Japan and have no desire to go there.
- "3. Because my family is remaining in this country now living at Encino, California and I would like to join them and remain this country.
- "4. I have never been in any subversive activities or organizations and I am not a pro-japanese trouble-maker."

In the report and recommendation of the hearing officer at the hearing on his application for non-repatriation on February 18, 1946, said hearing officer remarked as follows:

"No organizational activities; excellent employment record at Manzanar and Santa Fe. Has never been to Japan; thoroughly Americanized. Clear case of parental influence. See transcript of renunciation hearing. At that time stated that he had no feeling of loyalty to Japan. Answered questions 27 and 28 on Army Registration form in the affirmative."

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As a result of the hearing and the recommendation of the hearing officer, he was ordered released from the Alien Internment Camp at Santa Fe, New Mexico, on March 27, 1946. Soon after his release from the camp, he volunteered for the United States Army and [310]

was ordered to report for overseas duty on November 2, 1946, and on November 16, 1946, was ordered to the Presidio of Monterey, California, for Military Intelligence Language School training.

6. Plaintiff Miye Mae Murakami was born on November 18, 1917, in Mountain View, California. She attended the public schools in Menlo Park, California. She married her present husband, a Japanese alien, on September 16, 1939. She was evacuated with her family from Santa Monica, California, on April 28, 1942, and sent to the Manzanar Relocation Center, California. In February 1944, she was transferred to the Tule Lake Center under the "segregation program" as a result of her husband having applied for repatriation to Japan. On March 1, 1945, she applied for permission to renounce United States nationality and was granted a hearing on said application on March 14, 1945. She signed a form for renunciation of United States nationality on the same day as the hearing, to wit: March 14, 1945, which was approved by the Attorney General on May 3, 1945.

In a letter sent to Mr. E. J. Ennis of the Enemy Alien Control Unit of the Department of Justice in Washington, D. C., dated August 30, 1945, she set forth the fact that pressure had been applied to her to renounce her citizenship. The letter is set forth below as follows:

"Dear Mr. Ennis:

"Several months ago, I renounced my United States citizenship which I regret very much. My final papers have not come so I am writing in hopes that this letter reaches you in time.

"At the time I sent my application in, the members of the organization made it so that to have peace

around the block one just had to renounce his citizenship. The pressure was so bad we even had to join this organization, but we managed to withdraw later.

"Also at that time, I thought that my husband, who is an alien and I, who is a citizen, would be separated so the only way [311] was to renounce my citizenship and remain together.

"At the relocation office I found out that my husband is on the free list while I am not; just because of my citizenship.

"For the above reasons, I would like you to reconsider cancellation of my renunciation of citizenship. I am asking for a parole from Tulelake so I can go out with my husband.

"Am anxiously waiting for a reply, I remain,

Yours very truly,

/s/ Mae Miye Murakami"

In the report and recommendation of the hearing officer on her application for non-repatriation dated June 25, 1946, she stated to the hearing officer that the primary reason for her having renounced her United States nationality was her fear of being separated from her husband in view of the fact that she had three small American-born children to care for. As a result of her hearing, she was ordered released from the Tule Lake Center on February 21, 1946.

7. Plaintiff Tsutako Sumi was born on October 13, 1914, in Los Angeles, California. She is married to a Japanese alien and is the mother of three small children. She and her husband, together with the children, were

evacuated to the Manzanar Relocation Center in April 1942, and were later transferred to the Tule Lake Center under the "segregation program" on February 27, 1944, after her husband had applied for repatriation to Japan. She applied for permission to renounce United States nationality on January 20, 1945, and was granted a hearing on renunciation of her citizenship on February 1, 1945. On the day of the hearing, she also signed a form renouncing her United States nationality, which renunciation was approved on May 3, 1945. On December 3, 1945, she addressed a letter to the Department of Justice in Washington, D. C., that she had applied for her application for renunciation by mistake. A copy of this letter is set forth below: [312]

"Dear Sir:

"I, Sumi Tsutako, (Family No.) 1293 and re-
Last Name
siding at 7502-AB Tule Lake, Calif. am a renouncee and applied for an application for repatriation by mistake.

"My desire is to remain in this country with my children who are all American citizens.

"At that time, I immediately notified the Philadelphia Office of Japanese Interest to have my application changed to Application for non Repatriation.

"As I had notified you about this matter, I am writing this letter at this time to have my case recorded at your office.

Very truly yours,

/s/ Tsutako Sumi"

Thereafter on January 23, 1946, at a hearing as to whether she should be repatriated to Japan, the hearing officer reported that her reason for renouncing her United States nationality was to accompany her husband to Japan. An order for her release from the Tule Lake Center was entered on February 19, 1946.

8. Plaintiff Mutsu Shimizu was born on July 4, 1914, in Los Angeles, California. She married her husband, a Japanese alien in 1938. She attended the public schools in Venice, California. She is the mother of three children born in the United States. She and her husband with the three children were sent to the Gila River Relocation Center, and were later transferred to the Tule Lake Center under the "segregation program" as a result of her husband having applied for repatriation to Japan. Her brothers and relatives have all served honorably in the United States Army or assisted directly in other ways in the war effort. One of her brothers served in the United States Army in Korea; her other brother taught the Japanese language at the Army language school at Stillwater College, Oklahoma; her two brothers-in-law served overseas in the United States Army. [313]

On December 28, 1944, she applied for permission to renounce her United States nationality and was granted a hearing on January 16, 1945. On the day of the hearing, she further signed a form renouncing her United States nationality, which renunciation was approved by the Attorney General on May 3, 1945. On November 5, 1945, a letter was addressed to the War Department in Washington, D. C., by her parents on her behalf that she had renounced her citizenship because of the atmosphere which prevailed in Tule Lake Center which

forced her to renounce against her will. A copy of this letter is set forth below as follows:

“November 5, 1945.
Gallup, New Mexico

“War Department
Department of Justice,
Washington 25, D. C.

“Dear Sir:

Re: Mrs. Mutsu Shimizu
address 402-C
Tulelake, California.

“We the undersigned are the parents of the above person. Now we understand that she has changed her mind and desires to remain in this country forever. Also, we understand that she previously has renounced her citizenship that might be caused by such atmosphere in Tulelake Center, where such a formidable atmosphere often prevails in such a camp as Tulelake.

“Now she realizes her wrong attitude and has changed her mind and wishes to stay in this country together with her husband namely Akira Shimizu and their three children.

“As the parents to foresaid Mutsu Shimizu, we heartily beg to Your Honor for your consideration on this case and please let them stay in this country, and we are to be sure that she was a good citizen in this country and will be the same in the future. [314]

“Yours truly,

/s/ Kichiji Chuman Father
/s/ Toyo Chuman Mother
P. O. Box 512
Gallup, New Mexico”

At the hearing that was held on January 15, 1946, she stated that she renounced her citizenship in order to accompany her husband to Japan in the event her husband was deported, and that if she attempted to raise her children outside the camp, she did not feel that normal life was possible in the United States because of prejudice. As a result of the hearing, an order was entered on February 13, 1946, that she should be released from the Tule Lake Center.

9. Each of the plaintiffs was found by the War Relocation Authority to be free of any suspicion of disloyalty to the United States.

10. In January 1942, great anti-Japanese agitation was aroused, proposing that all persons of Japanese ancestry should be evacuated from the West Coast of the United States. The agitation resulted in the ultimate removal from this area by military authorities of all persons of Japanese ancestry whether alien or citizen of the United States.

11. In February, 1942, approximately six hundred (600) males of Japanese ancestry who theretofore had been serving in the United States Army, either by way of induction or enlistment, had been honorably discharged from the United States Army or transferred to the Reserves. The certificates of honorable discharge gave as the reason for discharge, for the convenience of the Government. Commencing in March through the spring of 1942, one hundred and ten thousand [315] (110,000) persons of Japanese ancestry, both citizens and aliens alike, were removed from the Western Defense Command composing all the Pacific Coast states into assembly centers and later into relocation centers. Such evacuation was felt by these persons to be proof that they were

persona non grata to the American public and to the United States Government. In a matter of a few short weeks, a lifetime of savings had been lost. They had lost their homes and friends. They had been forced to liquidate, give away, or abandon their farm equipment, merchandise, and such other valuable and personal property that they had.

12. In the Spring of 1943, the War Relocation Authority, under which persons of Japanese ancestry had been placed under military guard in the relocation centers, encountered unfavorable publicity in the press. A subcommittee of the House Select Committee to Investigate Un-American Activities conducted an investigation into the policies of the War Relocation Authority and recommended segregation of those whom it deemed disloyal to the United States from those it deemed loyal. The preparation for this segregation process was carried on in the spring and summer of 1943. The Tule Lake Relocation Center was designated as the depository for "disloyal" Japanese. Over 6,000 American citizens of Japanese ancestry stigmatized as disloyal entered the Tule Lake Center in September and October of 1943 under this segregation program. Some 6,000 residents of Tule Lake who refused to move to another relocation center were also present in the center. Other persons included women and children. Children loyal to the United States were allowed to accompany segregree parents. Parents who were aliens loyal to the United States were allowed to accompany segregree children.

Several reasons were prominent as to why the evacuees decided to become segregants and to assume the status of individuals disloyal to the United States. They included (a) fear of being [316] forced to leave the cen-

ters and face a hostile American public; (b) concern for the security of their families; (c) fear on the part of evacuee parents that their sons would be drafted if the sons did not become segregees; (d) anger and disillusionment, owing to the abrogation of citizenship rights; (e) bitterness over economic losses brought about by the evacuation. A great many of the people at Tule Lake under the segregation program also regarded it as a place of refuge where they might remain for the duration of the war.

The final count under the segregation program was eighteen thousand (18,000) persons. They were placed in the Tule Lake Center in an area of six square miles of black volcanic ash and were forced to live in uncomfortable, black tar-paper barracks under a pall of black smoke in the winter and ash and dust in the summer. The 18,000 people within the confines of barbed-wire enclosure comprised a conglomerate community of persons from all walks of life living in close proximity with one another, not by reason of freedom of choice but under a predetermined program prescribed for them by the Government. There was no normal living to be found. Families from isolated rural communities were flanked by strange families from urban communities. Fishermen from Terminal Island, farmers from Central California, merchants from Seattle, Portland, San Francisco, Los Angeles, lawyers, doctors, and other professional persons and scholars, and even the gamblers, prostitutes, and criminals were co-mingled into this community. They lived in crowded, dismal barracks, ate unpalatable food of the mess halls, lacked privacy in community lavatories and laundry rooms, and lived in a constant atmosphere of a concentration camp of dead monotony.

The segregation program brought together persons who honestly felt an allegiance to Japan and the Japanese Emperor, but it also brought the trouble-makers, the malcontents, the fractious, the rebellious and frustrated, the draft-dodgers, the fanatics, [317] the social misfits, the professional "organizers," the party politicians, the political leaders and their gangs of "goons" and "strong arm" boys.

13. On November 1, 1943, there was a demonstration by the residents of Tule Lake Center against Dillon Myer, the Director of the War Relocation Authority. The leader of the representative body composed of Japanese residents engineered a mass demonstration. The behavior of this crowd was orderly. On the same day, however, a group of young Japanese entered the center hospital and attacked and severely beat the Caucasian chief medical officer who was unpopular with the Japanese residents.

14. On November 4, 1943, a fight broke out between the Caucasian War Relocation Authority Internal Security force (police department of the center) and a group of young Japanese men. Immediately thereafter the military assumed control of the center to prevent further demonstrations and attacks upon Caucasian personnel. The leaders of this mob action were placed within a barbed-wire stockade which had been constructed in the center.

15. From November 13, 1943, until January 24, 1944, the military completely controlled the Tule Lake Center under a declared condition of martial law.

16. On January 24, 1944, the Army returned Tule Lake Center to the control of the War Relocation Au-

thority. The Army, however, still held some three hundred and seventy-five (375) Japanese men as prisoners in the barbed-wire stockade, including all the members of the self-constituted "negotiating committee" which had engineered the meeting with Mr. Dillon Myer on November 1, 1943.

17. In the spring of 1944, it was becoming more and more evident on the part of Caucasian and Japanese residents that there existed a strong underground pressure group composed mostly of fanatic Japanese aliens and those persons of Japanese ancestry whose [318] sympathies lay with the Japanese Government. This underground group was considerably strengthened by the arrival of certain parolees from Santa Fe Alien Internment Camp, a camp operated by the Department of Justice for those whom it had apprehended as Japanese whose presence in the Western Defense Command at the outbreak of the war between Japan and the United States on December 7, 1941, was inimical to the national defense. Powerful gang leaders accompanied these groups of parolees.

18. In the spring of 1944 soon after the arrival of this group of parolees or in April 1944, the underground group emerged and adopted the name Saikakuri Seigan (literal translation: "Appeal for Resegregation"). This resegregation group was also known as the Sokuji Kikoku Hoshi-dan whose membership was composed of families, adult aliens, citizens, and minor children.

19. Later in 1944, the Hoshi-dan sponsored an auxiliary body for young men. This was called the Young Men's Fatherland Group. It was also called the Sokoku Kenkyu Seinen-dan and the Hokoku Seinen-dan. Most of the members were citizens of the United States.

These organizations were intimately related, and many or most of the members of the Young Men's Fatherland Group were members of the resegregation group. The older men, i.e., the Issei, advised the Young Men's Fatherland Group and formed most of the policies of the young organization. It was the avowed purpose of the resegregation group to set up activities to keep the center in a state of turmoil. A series of assaults were added to the tension. Certain men who had openly criticized the activities of the resegregation group were attacked at night and severely beaten. Several of the beatings were engineered by the alleged gang leaders. None of the assailants were apprehended by the police. In the Tule Lake Center, seven men alleged to be "inus" were beaten. There was an extraordinarily powerful evacuee fear of being considered an "inu" or "stool pigeon." The "inu" phenomenon was a potent means of social [319] control in all the centers. In Tule Lake, it played a significant part in sociological developments which preceded renunciation of citizenship. It was largely responsible for the fact that terrorists and persons guilty of violent assault were not denounced to the authority.

20. On July 1, 1944, Subsection (i) of 401 of the Nationality Act authorizing renunciation of American citizenship under certain expressed circumstances was added to the Nationality Code of 1940. The proposal that American citizens should be permitted in time of war to renounce their citizenship was made for the purpose of devising a system of controlling the disloyal and riotous element at Tule Lake by separating them through renunciation of their American citizenship into enemy aliens for control and detention by the Department of Justice.

21. On July 3, 1944, Mr. Hitomi, the General Manager of the Cooperative and an alleged "inu," was found in front of an apartment of his relative with his throat cut. The remaining members of the Cooperative's Board of Directors received anonymous communications that they would meet the same violent end if they did not cease their opposition to the pro-Japanese association. The Japanese members of the Board resigned in a body. All Japanese members of the Internal Security also resigned and sought shelter for their families and themselves on the Caucasian side of the fence. The residents of the center were frightened for weeks. A period of extreme community tension and fear followed the murder of Mr. Hitomi. This murder set a pattern of violence over and above the ordinary beatings which took place from time to time, over and above the daily threats and intimidations which the organized minority used to dominate the unorganized majority. If Mr. Hitomi was killed for some reason or for no reason at all, the residents were in constant fear that the same thing would happen to them. [320]

22. On July 13, 1944, the Tule Lake project newspaper, *The Newell Star*, published a statement explaining that the Congress of the United States had passed a law which provided that a citizen of the United States might make a formal written renunciation of nationality.

23. On August 12, 1944, the resegregation group leaders organized a young men's group ostensibly devoted to the study of Japanese history and culture called the Sokoku Kenkyu Seinen-dan or the Young Men's Fatherland Group. This new group was fostered and developed by subversive leaders who organized "goon" squads or "strong arm" boys to execute their orders. In a high-

powered membership drive and with the use of every kind of deception, intimidation, and threat, the membership boomed. Many people, both young and old, were forced to join this subversive organization against their will. Men were forced to shave their heads. The Americanized girls were coerced into membership and then to wear their hair in "pig tails."

24. On September 24, 1944, a petition was circulated by this subversive group for renunciation by American citizens of their citizenship. This petition for renunciation was circulated without the permission of the War Relocation Authority. Pressure was exerted upon the residents who would not sign such a petition. A substantial majority of the residents disapproved of this petition and further resented the social pressure applied by its circulators. Gang leaders were threatening persons who opposed their program with violence. Many residents believed that if they opposed this resegregation group movement that they were in immediate danger of physical violence from the gang. In fact, the residents could not even speak against this resegregation program.

25. On September 27, 1944, the War Relocation Authority issued a statement that the petition was unauthorized. There was evidence, however, that the resegregationists continued their [321] efforts to get signatures.

26. On October 15, 1944, several elderly Issei men were attacked by a group of assailants and severely beaten. The attack was instigated by one of the advisors of the Young Men's Fatherland Group. The attack was occasioned by these persons having publicly spoken against the activities of the resegregation group.

27. On October 21, 1944, the gang leader of the Young Men's Fatherland Group addressed the members of the group and told them that he would incite the men to violence and promised to take care of them if they got into trouble.

28. On October 30, 1944, the right-hand man of the alleged gang leader knifed a young Nisei. The father of the victim had been a resegregationist, had "found out how rotten they were," and had publicly criticized the alleged gang leader. In addition to the known leaders of the disloyal organization, there was a group of unknowns, behind-the-scene advisors and strategists, who were much more powerful than the known leaders and members of the organization. These unknown advisors and strategists employed force through the use of "goon" squads. These strong armed gangs of fanatic young men operated at night intimidating, threatening, attacking, beating, and even accomplished a murder. The local evacuee police force was afraid to interfere with the activities of these hoodlums.

29. On December 5, 1944, Mr. John L. Burling of the Alien Enemy Control Unit of the War Division of the Department of Justice arrived at the Tule Lake Center to initiate the hearings for renunciation of citizenship. Mr. Burling had been sent by Assistant Attorney General Wechsler.

30. On December 6, 1944, the renunciation hearings commenced and continued until December 14, 1944. During this period there was an intensification of tensions, fears, and extreme insecurity, brought about by misinterpretations of administrative [322] policies on the part of the residents, which raised the residents to a state

bordering on panic. The common witticism among officials of the center at the time of the renunciation hearing was that the population of the center was largely "mad" and that the center should be taken from the War Relocation Authority and transferred to the United States Public Health Service to be run as a specie of mental institution. A nucleus of genuinely pro-Japanese leaders whipped the people up to hysterical frenzy of Japanese patriotism. Also, at or near the renunciation hearing, the pro-Japanese organization established a "college of renunciation knowledge" and carefully coached those called for hearings on questions which would be asked and the correct answers to be given. Specific instructions were given on what to say and how to act at the hearings.

31. The following is a brief description of the physical facilities and operation of the renunciation hearing procedure. Mr. John L. Burling was assigned a hearing room for his exclusive use. He was assigned a Caucasian interpreter and a Caucasian stenographer by the War Relocation Authority. Individuals who had applied for permission to renounce citizenship were called in separately and questioned by Mr. Burling. No other person of Japanese ancestry was in the room. After the questioning was finished, the applicant was presented with a renunciation form which he was asked to sign. Stenographic transcripts were taken of each hearing.

32. On December 19, 1944, Major-General H. C. Pratt, Commanding General of the Western Defense Command, withdrew the public proclamations and orders of 1942 which had ordered the exclusion of all persons of Japanese ancestry from the West Coast area. This lifting of the exclusion order permitted all such persons to return to the West Coast with the exception of named in-

dividuals who were served with individual exclusion orders. The project newspaper, *The Newell Star*, published this proclamation on the same day. [323]

33. Also on December 19, 1944, the War Relocation Authority, through Mr. Dillon Myer, issued a statement that all of the centers would be closed with a period of six months to one year after the revocation of the exclusion order. An Army team of some twenty officers further began to hold hearings on December 19 for the purpose of inducting loyal male residents of American citizenship into the United States Army.

34. On December 23, 1944, Mr. John L. Burling returned to Washington, D. C. to report to Mr. Edward J. Ennis, head of the Enemy Alien Control Unit, Assistant Attorney General Wechsler, and Attorney General Francis Biddle. Mr. Burling had been at the Tule Lake Center a period of eighteen days.

35. On December 26, 1944, as a result of force, fears, coercions, and intimidations of pro-Japanese aliens upon American citizens, some two thousand (2,000) applications for renunciation poured into the Department of Justice in Washington, D. C. Such a great number of applications caused the Tule Lake Center Post Office system to break down under the pressure.

36. On December 27, 1944, seventy leaders and officers of the resegregation group were removed to the Alien Internment Camp in Santa Fe, New Mexico. These men were the most active leaders in the reign of terror which existed in the center during the renunciation hearings. The removal of these seventy leaders gave the remaining terrorists and propagandists a stronger foothold over the pro-Japanese organizations.

37. In January 1945, Mr. John L. Burling again left Washington, D. C., for California with hearing officers, Charles M. Rothstein, Joseph J. Shevlin, Ollie Collins, and Lillian C. Scott.

38. Enroute to California, another avalanche of three thousand four hundred (3,400) additional applications for renunciation were received by the Department of Justice.

39. On January 11, 1945, the Department of Justice [324] hearing officers arrived at the Tule Lake Center. By the time they arrived, of seven thousand (7,000) citizens over the age of eighteen (18) years, over five thousand (5,000) had applied for renunciation of their citizenship.

40. On January 18, 1945, Mr. Burling released a letter written on behalf of the Attorney General condemning the activities of the resegregation group stating that they were "intolerable and they must cease." This letter was addressed to the Chairman of the Sokuji Kikoku Hoshidan and the Chairman of the Kokoku Seinen-dan as follows: "I am well aware that your two organizations have put pressure on residents of this center to assert loyalty to Japan and that in a number of cases physical violence was employed. . . . It is as treasonable to coerce others into asserting loyalty to Japan here as it would be outside. All these activities will stop."

41. On January 26, 1945, the second group of pro-Japanese organization leaders and officers were removed to the Department of Justice Internment Camp at Santa Fe, New Mexico. About six hundred and fifty (650) members of the organization were removed on February 11, 1945, and one hundred and twenty-five (125) men were removed to the same camp on March 4, 1945.

42. On January 29, 1945, a statement by Mr. Dillon Myer was released in the project newspaper that "those who do not wish to leave the Tule Lake Center are not required to do so and may continue to live here or at some similar center until January 1, 1946.

43. On February 11, 1945, after six hundred and fifty (650) members of the pro-Japanese organizations had been removed by the Department of Justice to the Santa Fe Alien Internment Camp, the anxiety and panic of the residents reached a new peak. Lawlessness, gangsterism, and hoodlumism prevailed at the center during this period. The residents of the Tule Lake Center had for almost four years been subject to the demoralizing effects of center life. [325] They had suffered physical hardship and loss of property from the evacuation. They had been stigmatized by the press as rioters. Those who desired work were not given employment. They had been subject to misinterpretation of the renunciation procedure. They had been subject to rumors which had produced an irrational state of mind, which accompanied long detention, isolation, tension, and insecurity in the form of a mass hysteria.

44. On March 16, 1945, the War Relocation Authority announced to the residents that the activities in which the pro-Japanese group had taken part, e. j., parades, drilling, and bugling, were unlawful and prohibited. This announcement came after the pressure by these disloyal elements had accomplished the purpose of having obtained a renunciation by a great majority of the residents of their citizenship.

45. Albert Yuichi Inouye applied for renunciation of his citizenship when he was seventeen (17) years of age and his renunciation was approved by the Attorney Gen-

eral when he was eighteen (18) years of age, under a combination of circumstances which amounted to undue influence and parental coercion.

46. Miye Mae Murakami lived during the entire renunciation procedure in Block 75 of Ward 8, admittedly the most rabid pro-Japanese section of the entire Tule Lake Center. She lived in an atmosphere of fears, threats, and scares stirred up by gangsters and hoodlums of the pro-Japanese organizations. She was threatened with her life unless she renounced, even in the supposed privacy of the women's washroom when rough-looking men invaded such room to put the women in fear of physical harm. She lived in an atmosphere of assaults, batteries, stabbings, and pressures from neighbors. She had heard of the mysterious murder of a leader of the Japanese community and that other residents would meet the same [326] fate unless they renounced their citizenship. These threats and fears resulted in her losing completely any sense of perspective or balance in her thinking. She renounced her citizenship not of her own free will but by the pressure exerted upon her by the life in the community and by the fears that prevailed in the center.

47. Tsutako Sumi resided in Block 75, Ward 8. She lived in an atmosphere of threats, wild distorted reports and rumors. The pro-Japanese gangs attempted to force everyone in the block to renounce their citizenship. The leaders applied pressure upon her husband to force him to coerce his wife to renounce her citizenship. She was cognizant of the beatings which had been imposed upon residents who had dared to oppose the pro-Japanese groups. She knew that the center police force, composed of Japanese evacuees, could never give her adequate protection in the case of an assault. She was also caught in

a whirlpool of mass anxiety, pressures, ridicules, and threats, which in the end resulted in her renouncing her citizenship against her will.

48. Mutsu Shimizu had heard of a murder committed upon a resident of the center which was followed by threats from pro-Japanese groups that other residents would meet the same end if they did not renounce. She was fearful of physical violence from Caucasians if she relocated. The pro-Japanese societies constantly stirred her emotions, fears, and anxieties. She lived in an atmosphere of pressures, compulsions, influences, and coercions which deprived her of any voluntary willingness to renounce her citizenship. Being subject to and living daily in such an atmosphere caused her to renounce her citizenship.

CONCLUSIONS OF LAW

1. This Court has jurisdiction under the provisions of 8 U. S. C. 903 (54 Stat. 1171) and under the provisions of Judicial [327] Code Section 274d, Amended (28 U. S. C. 400).

2. The purported renunciation by plaintiff Albert Yuichi Inouye, a minor under the age of twenty-one (21) years, who purported to renounce his citizenship because of parental compulsion is void and of no force or effect.

3. The plaintiff Albert Yuichi Inouye, a minor under the age of twenty-one (21) years, was under a legal disability to renounce his civil rights. Therefore, his purported renunciation of citizenship is void and of no force or effect.

4. The benefits of citizenship can be renounced or waived only as the result of free and intelligent choice. Since the purported renunciation of the plaintiffs Miye Mae Murakami, Tsutako Sumi, and Mutsu Shimizu was not as a result of their free and intelligent choice but rather because of mental fear, intimidation, and coercions depriving them of the free exercise of their will, said purported renunciations are void and of no force or effect.

5. All of the plaintiffs are entitled to have their purported renunciations cancelled and they are further entitled to be restored to their full rights of citizenship.

6. Judgment is hereby ordered to be entered cancelling the purported renunciations of all the plaintiffs and adjudging that all the plaintiffs be restored to their full rights as citizens of the United States. [328]

Dated this 18th day of September, 1947.

CHARLES C. CAVANAH

Judge, United States District Court

Approved as to form under local rules 7(a) of the United States District Court this 17th day of September, 1947. James M. Carter, United States Attorney; Ronald Walker, Assistant United States Attorney, Attorneys for Defendants.

[Endorsed]: Filed Sep. 18, 1947. Edmund L. Smith, Clerk. [329]

In the District Court of the United States in and for the
Southern District of California

Central Division

No. 5945-W

ALBERT YUICHI INAUYE, MIYE MAE MURA-
KAMI, TSUTAKO SUMI and MUTSU SHIMIZU,
Plaintiffs,

vs.

TOM C. CLARK and WILLIAM A. CARMICHAEL,
Defendants.

JUDGMENT

The above cause having come on for trial on August 18, 1947, the parties hereto having stipulated that the testimony submitted to the Court in affidavits filed in behalf of both the plaintiffs and the defendants upon motions for summary judgment, may be considered by the Court upon said trial upon the merits and that the various affiants would, if called, testify to the factual matter set forth in their respective affidavits,

And the Court being fully advised in the premises and having made and filed its Findings of Fact and Conclusions of Law and the Court having ordered judgment herein in favor of the plaintiffs, Albert Yuichi Inouye, Miye Mae Murakami, Tsutako Sumi, and Mutsu Shimizu, and against the defendants, Tom C. Clark and William A. Carmichael,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed That: [330]

The renunciations of United States citizenship pursuant to Section 801(i) of the Nationality Act of 1940, executed by the plaintiffs and each of them and approved by the Attorney General, are null and void and cancelled; and that the plaintiffs and each of them are hereby restored to their rights of United States citizenship.

Dated at Los Angeles, California, this 18th day of September, 1947.

CHARLES C. CAVANAH

United States District Judge

Approved as to form under local rules 7(a) of the United States District Court this 18th day of September, 1947. James M. Carter, United States Attorney; Ronald Walker, Assistant United States Attorney, Attorneys for Defendants.

Judgment entered Sep. 18, 1947. Docketed Sep. 18, 1947. C. O. Book 45, page 542. Edmund L. Smith, Clerk; by E. M. Engstrom, Jr., Deputy.

[Endorsed]: Filed Sep. 18, 1947. Edmund L. Smith, Clerk. [331]

[Title of District Court and Cause]

NOTICE OF APPEAL

You Will Please Take Notice that the defendants Tom C. Clark and William A. Carmichael do hereby appeal to the United States Circuit Court of Appeals for the 9th Circuit from the judgment of the above-entitled District Court entered September 18, 1947, in favor of plaintiffs and against said defendants, and from the whole thereof.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Asst. United States Attorney

Attorneys for Respondent and Appellant

[Endorsed]: Filed; mld. copy to Frank Chuman, 257 So. Spring, L. A. 12, Atty. for Plfs., Dec. 10, 1947. Edmund L. Smith, Clerk. [332]

[Title of District Court and Cause]

ORDER EXTENDING TIME TO FILE RECORD
ON APPEAL

Pursuant to the stipulation of the parties of the above-entitled action, the time within which appellants may file the record on appeal and docket the said action in the Circuit Court of Appeals is hereby extended to and including February 20, 1948.

Dated: This 15th day of January, 1948.

C. E. BEAUMONT

Judge, United States District Court [333]

[Title of District Court and Cause]

STIPULATION FOR EXTENSION OF TIME TO
FILE RECORD ON APPEAL

It Is Hereby Stipulated by and between the respective parties to the above entitled action that the time within which appellant may file the record on appeal herein and docket said action with the Circuit Court of Appeals may be extended to and including February 20, 1948.

Dated: This 15th day of January, 1948.

WIRIN, KIDO, OKRAND AND CHUMAN

By Frank Chuman

Attorneys for Plaintiffs and Appellees

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

Attorneys for Defendants and Appellants

[Endorsed]: Filed Jan. 15, 1948. Edmund L. Smith,
Clerk. [334]

[Title of District Court and Cause]

STIPULATION RE ORIGINAL EXHIBIT ON
APPEAL

It Is Hereby Stipulated by and between the parties to the above-entitled action that in forwarding the record on appeal to the Clerk of the Circuit Court of Appeals, the original of Exhibit "A" to the affidavit of A. L. Wirin filed in support of motion for summary judgment being a book entitled "The Spoilage", may be forwarded as a part of said record.

Dated: This 15th day of January, 1948.

WIRIN, KIDO, OKRAND AND CHUMAN

By Frank Chuman

Attorneys for Plaintiffs and Appellees

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

Attorneys for Defendants and Appellants

It Is So Ordered: This 15th day of January, 1948.

C. E. BEAUMONT

Judge, U. S. District Court.

[Endorsed]: Filed Jan. 15, 1948. Edmund L. Smith,
Clerk. [337]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 337, inclusive, contain full, true and correct copies of Amended Complaint Under Nationality Act; Stipulation filed Mar. 14, 1947; Answer to Amended Complaint; Notice of Hearing and Motion for Summary Judgment on Behalf of Defendants; Affidavits of Rosalie Hankey, John L. Burling, Joseph J. Shevlin and Charles M. Rothstein in Support of Motion of Defendants for Summary Judgment; Stipulation and Order re Affidavit in Support of Motion for Summary Judgment; Minute Order Entered August 12, 1947; Notice of Hearing and Motion for Summary Judgment on Behalf of Plaintiffs; Affidavits of A. L. Wirin, Louis M. Noyes, Robert H. Ross, Harry L. Black, Marvin K. Opler, John Alden, Fritz Kunkel, Miye Mae Murakami, Tsutako Sumi and Mutsu Shimizu in Support of Motion of Plaintiffs for Summary Judgment; Minute Order Entered August 18, 1947; Stipulation and Order re Hearings on Motion for Summary Judgment and Submission of Case on the Merits; Affidavit of Abe Fortas; Minute Order Entered September 5, 1947; Opinion; Stipulation and Order for Substitution of Party Defendant; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Order Extending Time to File Record on Appeal; Stipulation re Record on Appeal and Stipulation and Order re Original Exhibit on Appeal which, together with the original Exhibit A to the affidavit of A. L. Wirin, transmitted herewith, con-

stitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 23 day of January, A. D. 1948.

(Seal)

EDMUND L. SMITH,

Clerk,

By Theodore Hocke,

Chief Deputy Clerk.

[Endorsed]: No. 11839. United States Circuit Court of Appeals for the Ninth Circuit. Tom C. Clark, Attorney General of the United States and William A. Carmichael, District Director, Immigration and Naturalization Service, United States Department of Justice, District 16, Appellants, vs. Albert Yuichi Inouye, Miye Mae Murakami, Tsutako Sumi and Mutsu Shimizu, Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed January 26, 1948.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11839

TOM C. CLARK and WILLIAM A. CARMICHAEL,
Appellants,

v.

ALBERT YUICHI INOUE, MIYE MAE MURA-
KAMI, TSUTAKO SUMI and MUTSU SHIMIZU,
Appellees.

STATEMENT OF POINTS

RULE 19(6)

Pursuant to Rule 19(6) of the rules of this Court, Appellants Tom C. Clark and William A. Carmichael submit herewith a concise statement of the points on which they intend to rely on the within appeal:

1. The District Court lacked jurisdiction generally over the subject matter of appellants or either of them under the Nationality Act of 1940, 8 U. S. C., Section 903, and particularly by reason of fact that appellee did not allege or prove denial of any right or privilege as a national of the United States.

2. Appellees did not allege or prove a claim upon which relief could be granted under said Nationality Act.

3. The District Court erred in holding that the acts of the appellees in renouncing their citizenship pursuant to the act of January 20, 1944, 8 U. S. C., Section 801(1),

were null and void in the circumstances related in the court's Findings of Fact.

4. The District Court erred in holding that the said acts of renunciation by appellees were made under undue influence, duress and coercion and not of their free will and act.

5. The District Court erred in holding that as to the appellee Albert Yuichi Inouye, his application for renunciation of citizenship was also null and void for the reason that he was not of competent legal age at the time he made his application for renunciation.

6. The Findings and Judgment are not supported by the evidence.

7. The decision is against the law.

JAMES M. CARTER

United States Attorney

[Endorsed]: Filed Mar. 3, 1948. Paul P. O'Brien,
Clerk.

Nos. 11839 and 12082

**In the United States Court of Appeals for the
Ninth Circuit**

**TOM C. CLARK, ATTORNEY GENERAL OF THE UNITED STATES,
AND WILLIAM E. CARMICHAEL, DISTRICT DIRECTOR, IMMIGRA-
TION AND NATURALIZATION SERVICE, UNITED STATES DEPART-
MENT OF JUSTICE, DISTRICT 16, APPELLANTS**

v.

**ALBERT YUICHI INOUE, MIYE MAE MURAKAMI, TSUTAKO
SUMI AND MUTSU SHIMIZU, APPELLEES**

GEORGE C. MARSHALL, AS SECRETARY OF STATE, APPELLANT

v.

**MIYE MAE MURAKAMI, TSUTAKO SUMI AND MUTSU SHIMIZU,
APPELLEES**

**ON APPEALS FROM JUDGMENTS OF THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA,
CENTRAL DIVISION**

BRIEF FOR APPELLANTS

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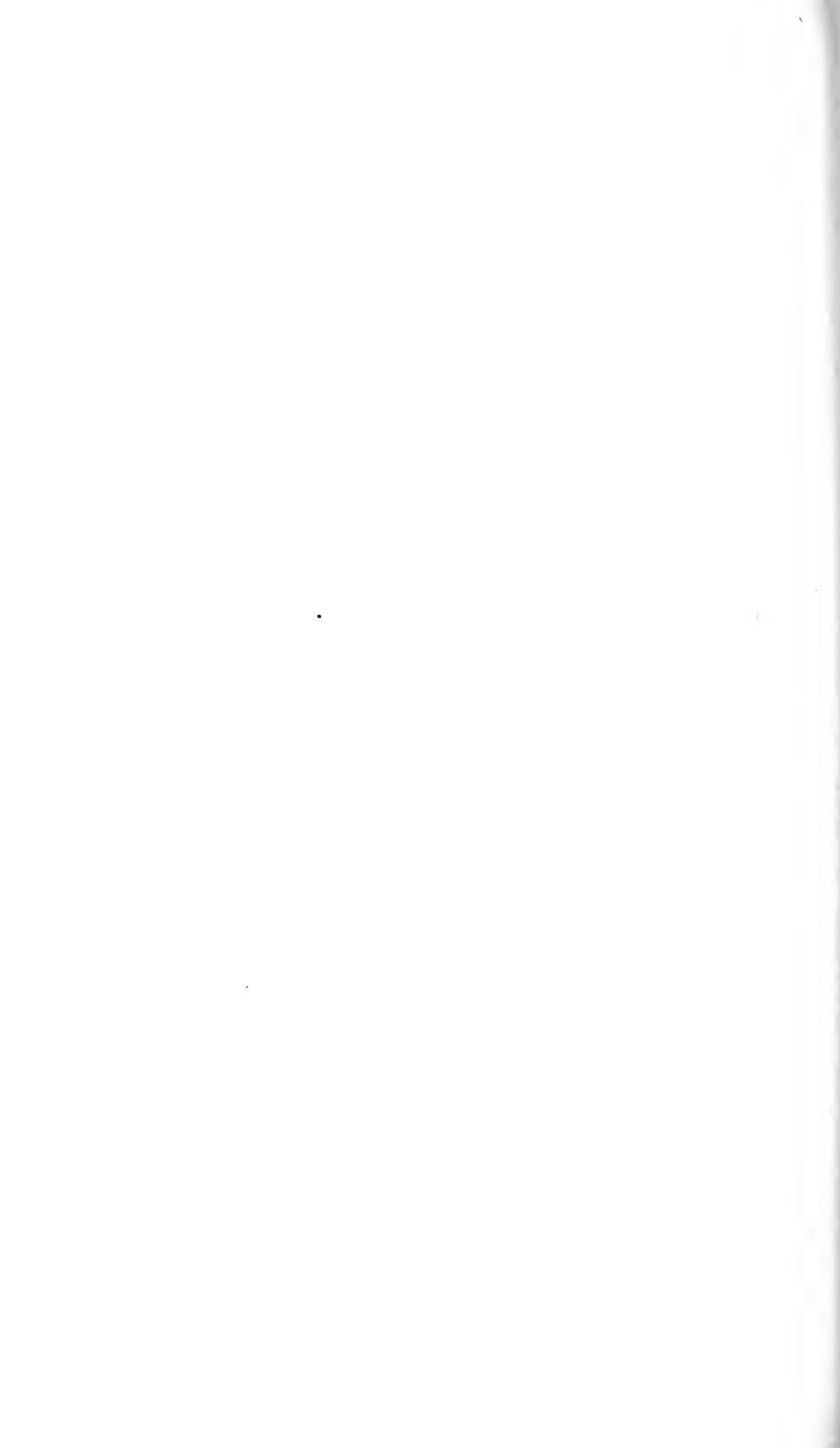
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In the United States Court of Appeals for the Ninth Circuit

No. 11839

TOM C. CLARK, ATTORNEY GENERAL OF THE UNITED STATES,
AND WILLIAM A. CARMICHAEL, DISTRICT DIRECTOR, IMMIGRA-
TION AND NATURALIZATION SERVICE, UNITED STATES DEPART-
MENT OF JUSTICE, DISTRICT 16, APPELLANTS

v.

ALBERT YUICHI INOUE, MIYE MAE MURAKAMI, TSUTAKO
SUMI AND MUTSU SHIMIZU, APPELLEES

No. 12082

GEORGE C. MARSHALL, AS SECRETARY OF STATE, APPELLANT

v.

MIYE MAE MURAKAMI, TSUTAKO SUMI AND MUTSU SHIMIZU,
APPELLEES

*ON APPEALS FROM JUDGMENTS OF THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA,
CENTRAL DIVISION*

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENTS

In No. 11839, the appeal is from a judgment entered Sep-
tember 18, 1947 (R. 369-370)¹ by the United States District
Court for the Southern District of California, Central Divi-

¹ References to the transcript of record in No. 11839 will be designated
herein by the symbol R.; those to the transcript of record in No. 12082 by the
symbol M. R.

sion, restoring appellees therein to the rights of United States citizenship and declaring null and void renunciations of citizenship theretofore executed by them and approved by the Attorney General pursuant to the provisions of Section 401 (i) of the Nationality Act of 1940, as amended (8 U. S. C. 801 (i)).

Appellees' amended complaint, filed in the court below on February 11, 1947 (R. 2-15), named as defendants Tom C. Clark, Attorney General of the United States, and Albert Del Guercio, at that time Acting District Director of the Immigration and Naturalization Service of the Department of Justice for the Southern District of California. William A. Carmichael, having succeeded to the office held and functions performed by Albert Del Guercio, was thereafter substituted as a party defendant pursuant to stipulation between the parties (R. 340).

In Paragraph IV of the amended complaint, appellees alleged that the court below had "jurisdiction herein by virtue of Title 8, United States Code, Sec. 903" (R. 3), which provides in pertinent part as follows (Section 503 of the Nationality Act of 1940; 54 Stat. 1171):

If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such person claims a permanent residence, for a judgment declaring him to be a national of the United States. * * *

In their answer to the allegation of the amended complaint that the court below had jurisdiction by virtue of the statutory provision above quoted, appellants neither admitted nor denied "the conclusion of law comprising Paragraph IV of the said complaint, regarding the question of jurisdiction as a matter to be determined by the court" (R. 17-18). It is the position

of the appellants on this appeal, despite the conclusion of the court below to the contrary (R. 367), that that court was without power under the provisions of Section 503 of the Nationality Act of 1940 to entertain this proceeding for the reason that neither the Attorney General nor any other official of the Department of Justice was denying, or has since denied, appellees or privilege of nationals of the United States.

The court below further concluded as a matter of law (R. 367) that the entry of its judgment was authorized under the provisions of Section 274d of the Judicial Code as amended (28 U. S. C. §§ 2201, 2202, formerly 28 U. S. C. § 400).² It is submitted herein that this holding was likewise erroneous.

In No. 12082, the three appellees involved are likewise parties to the proceeding in No. 11839. The appeal in No. 12082 is from a judgment entered August 27, 1948, (M. R. —) by the United States District Court for the Southern District of California, Central Division, also declaring null and void, and cancelling, the renunciations theretofore executed by the appellees. The judgment contained a further order that the Secretary of State "recognize and treat" the appellees as citizens of the United States (*id.*)

The complaint in No. 12082 alleged (M. R. —), and the answer admitted (M. R. —), that the appellees had on various dates in May and June 1948, duly applied for passports and that officers of the State Department had refused to issue passports to them on the sole ground that appellees were no longer citizens or nationals of the United States by reason of the aforesaid renunciations of United States nationality, thereby denying appellees claimed rights as such.

² § 2201. Creation of remedy—

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

§ 2202. Further relief—

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

The jurisdiction of the District Court rests upon the provisions of Section 503 of the Nationality Act of 1940 set forth *supra*, p. 2. This Court has jurisdiction to review both of the judgments of the District Court under Title 28, United States Code, section 1291.

QUESTIONS PRESENTED

In No. 11839 the questions presented are five in number as set forth below:

1. Whether, in the absence of any showing that the Attorney General or other executive officer of the Department of Justice has denied to the appellees any right or privilege of a national of the United States, the action in No. 11839 may properly be maintained under the provisions of Section 503 of the Nationality Act of 1940.

2. If not, whether the relief sought in No. 11839 may properly be granted by way of a declaratory judgment under the provisions of Sections 274d of the Judicial Code (28 U. S. C. §§ 2201, 2202).

If either of the foregoing questions be answered in the affirmative, then the following questions are presented in No. 11839:

3. Whether the acts of the appellees in renouncing their United States citizenship pursuant to the provisions of the Act of July 1, 1944 (58 Stat. 677, 8 U. S. C. 801 (i)) are null and void because made as a result of mental fear, intimidation and coercion depriving them of the free exercise of their will.

4. Whether an individual eighteen years of age may make an effective renunciation of citizenship under the foregoing statutory provision.

5. Whether the provisions of the Act of July 1, 1944, *supra*, are violative of the Fifth or Fourteenth Amendments to the Constitution or constitute an unconstitutional delegation of power to the executive branch of the Government.

In No. 12082, the questions numbered 1, 2, and 4, above, are not presented. The questions numbered 3 and 5 above, however, are common to both appeals.

STATUTES INVOLVED

The provisions of Section 503 of the Nationality Act of 1940 (8 U. S. C. § 903), and those of Section 274d of the Judicial Code as amended (28 U. S. C. §§ 2201, 2202) are set forth *supra* at page 2 and in note 2, page 3, respectively. The provisions of Section 401 of the Nationality Act of 1940 as amended by the Act of July 1, 1944 (54 Stat. 1168; 8 U. S. C. 801 (i) are as follows:

A person who is a national of the United States whether by birth of naturalization, shall lose his nationality by:

* * * * *

(i) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense.³

STATEMENT

I. The nature of the case

The appellees in No. 11839 are four persons of Japanese ancestry born in the United States and residents of the State of California, who, on various dates in and between December 1944 and March 1945, made formal applications for permission to renounce their United States' citizenship (R. 149-151; 159-160; 176-178; 194-196) pursuant to the provisions of the Act of July 1, 1944, *supra*, and regulations issued by the Attorney General implementing that Act.⁴ Thereafter, following individual hearings (R. 151-153; 161-163; 178-180; 196-197)

³ Section 801 (i), with which this proceeding is primarily concerned, together with certain other permanent war time laws, was rendered inoperative by the Joint Resolution of July 25, 1947; ch. 327, sec. 3, 67 Stat. 451 (Public Law 239, p. 7, 80th Cong., 1st sess.). Section 801 in its entirety is set forth as Appendix A, *infra*.

⁴ These regulations are set forth in 9 F. R. 12241 and the pertinent provisions thereof are contained in Appendix B, *infra*.

before officers appointed pursuant to such regulations, each of the appellees signed formal renunciations of citizenship (R. 153-154; 163-164; 181-182; 198-199) which became effective, as provided by the Act, upon their subsequent approval by the Attorney General as not contrary to the interests of national defense (R. 154; 164; 182; 199). The proceeding in No. 11839 was brought to obtain the cancellation of all such renunciations, and a judgment that the appellees therein are nevertheless citizens and nationals of the United States (R. 15). The proceeding in No. 12082 was brought in behalf of three of the four appellees in No. 11839, and sought the same relief.

In appellees' amended complaint in No. 11839 (R. 2-15), filed in the Court below on February 11, 1947, the foregoing renunciations are admitted, but it is alleged that "said renunciations were not of their [the appellees'] own free and voluntary acts; but on the contrary, were the result of undue influence, mistake, misunderstanding and coercion" (R. 3). Three of the four appellees (Sumi, Murakami, and Shimizu) were at the time of their renunciations, and each had been for approximately a year prior thereto, at the Tule Lake Relocation Center. This center was one of ten such facilities established for occupancy by persons of Japanese ancestry following their exclusion from the West Coast area shortly after the Japanese attack on Pearl Harbor. With respect to these appellees, the amended complaint further alleged in substance (1) that the husband of the appellee Sumi, as the result of pressures exerted upon him by pro-Japanese elements among the Tule Lake residents, "coerced and compelled his wife to renounce her citizenship against her will and desires" (R. 6-7); (2) that the appellees Murakami and Shimizu were each married to alien Japanese and that each renounced because they were informed that renunciation was the only method to avoid enforced separation from their husbands (R. 5, 8) and, more generally, because of the existence of a state of "hysteria, tension, fear and fright" (R. 6) "aggravated by threats and rumors of threats, killings, stabbings imposed upon those who did not renounce * * *" (R. 7-8). To each of these allegations the appellants'

answer, filed on June 2, 1947 (R. 17-24), interposed a general denial.

The three appellees above referred to are also appellees in No. 12082. The complaint in that proceeding, filed in the District Court on July 6, 1948 (M. R. —), contained identical allegations (except as to certain jurisdictional averments) with respect to these appellees as were contained in the amended complaint filed in No. 11839. Since the allegations of the answers to both complaints were not in substance different, we shall describe herein the averments of the pleadings in both cases together, except where otherwise specifically stated.

Aside from the general allegation quoted at the beginning of the preceding paragraph, no specific allegations as to the reasons motivating the renunciation of the appellee Inouye are contained in the amended complaint in No. 11839. This appellee is not a party to the proceeding in No. 12082. He was not located at the Tule Lake Center at the time of his renunciation but was instead at the Manzanar, California, Center (R. 182). The amended complaint alleged (R. 4) and the answer admitted (R. 18) that Inouye was seventeen years of age at the time he first instituted steps looking towards the renunciation of his citizenship and that he was eighteen years old at the time he made formal renunciation.

Both complaints further alleged that the Act of July 1, 1944 (hereinafter referred to as the renunciation statute), was unconstitutional in that citizenship conferred by the Fourteenth Amendment cannot be renounced or, if it may be, that authority to approve such renunciations may be granted only to the judicial branch of the government; further that the statute deprived appellees of liberty without due process of law in contravention of the Fifth and Fourteenth Amendments: that the statute constituted an unlawful delegation of power to the executive branch of government; and that the "renunciation procedure is an attempt to enforce an act of Congress which is vague and indefinite as to the standards to be followed by which renunciation is to be effected" (R. 9).

Finally, as a second cause of action, the complaints alleged in substance that citizens of Japanese ancestry, among them the appellees, were discriminatorily treated by the Government

after February, 1942; that following enactment of the renunciation statute it was made known to such citizens that they could renounce; that the decision of each of the appellees to renounce was substantially affected by the alleged discriminatory treatment and by the spread of misinformation, rumor and fear in the relocation centers which the Government failed to prevent; that in these circumstances the acceptance of appellees' renunciation applications "was unfair, unreasonable and a violation of the due process of law clause of the Fifth Amendment to the Constitution * * *," and that because announcements of the right to renounce conferred by the Act of July 1, 1944, were allegedly made only to citizens of Japanese ancestry, the ensuing approval of appellees' renunciation requests constituted an unreasonable discrimination on the basis of race in violation of the guarantees of the Fifth Amendment (R. 10-15).

These allegations were in the main denied by the appellants' answers (See R. 20-24), save that "the spread of misinformation, rumor, conjecture and fear throughout the camps" was admitted, it being denied, however, that the prevention of such spread was possible or that reasonable, although not entirely successful, preventative steps were not taken by both the War Relocation Authority and the Department of Justice (R. 21-22).⁵

Following the filing of their answer in No. 11839 the appellants moved in the Court below for summary judgment on the basis of attached affidavits (R. 26). The appellees in that case cross-moved for summary judgment (R. 208) and also presented affidavits in support thereof. These motions were orally argued and submitted on August 18, 1947 (R. 322). On August 22, 1947, however, the parties, prior to a decision of these motions, entered into a stipulation (R. 323-324) providing that the Court below might render a decision on the merits upon a record comprised of the affidavits submitted in con-

⁵The answers further admitted the allegation that the renunciation procedure was explained only to citizens of Japanese ancestry and not to others, but asserted that the reason for this was that only from such persons were a sufficient number of requests received to warrant the giving of information as to how renunciations could be accomplished. (R. 22-23.)

nection with the respective motions for summary judgment. In No. 12082 the parties thereto also moved and cross-moved for summary judgment. Save for certain excluded materials relating to Inouye, the affidavits filed in connection with these motions were those filed and of record in No. 11839. A stipulation similar to that made in No. 11839 was also entered into by the parties providing that the Court might render a decision on the merits (M. R. —).

As an integral part of both stipulations, it was agreed that the various affiants would, if called as witnesses, testify to the factual matters set forth in their respective affidavits and that the courts might utilize such data, if otherwise competent, as the basis for their decisions (R. 323; M. R. —). The summary which follows of the events preceding, and the circumstances surrounding, the renunciations is derived primarily from such sources. Much of the preliminary material dealing with evacuation and resettlement, registration, segregation, and the resegregation movement is taken from the one volume study of wartime Japanese American evacuation and resettlement by Dorothy J. Thomas and Richard Nishimoto entitled *The Spoilage*⁶ which is incorporated in the record in No. 11839 through the affidavit of A. L. Wirin (R. 209-213) filed in support of appellees' motion for summary judgment therein, and in No. 12082 by the above-mentioned stipulation of the parties in that case.

II. BACKGROUND OF THE RENUNCIATIONS

Evacuation and Resettlement.—The congeries of Executive Orders of the President, Public Proclamations and Civilian Exclusion and Restrictive Orders issued by the Secretary of War and the Military Commander of the Western Defense Com-

⁶ Univ of Cal. Press, 1946. Reference to this source will be designated herein by the symbol "T&N" followed by page references. While, obviously, this book does not constitute competent evidence in and of itself, most of its pertinent factual statements have been checked against official records and, in the main, have been found substantially accurate. Accordingly, the exhibit having been introduced by the appellees, the Government now agrees that the factual statements set forth therein, to the extent adopted in this statement, but to no greater extent, may be regarded as facts in this case.

mand, and the implementing Act of March 21, 1942 (56 Stat. 173), whereby the exclusion and relocation of citizens of Japanese ancestry residing in the West Coast areas was accomplished, have been described in some detail in several Supreme Court decisions⁷ and recapitulated by that Court in *Ex parte Endo*, 323 U. S. 283, at pp. 285-290. In the early development of these measures, the intent was solely to exclude from these areas, as a matter of military necessity for the prevention of espionage and sabotage,⁸ persons having common ancestry with the enemy that launched the Pearl Harbor attack. Early manifestations of public hostility in localities receiving an influx of evacuees from the prescribed areas, however, caused, by the end of March 1942, a temporary abandonment of plans to permit voluntary resettlement (T&N,⁹ 10-11, 24-26). The great bulk of evacuees were thereafter detained in temporary "assembly centers" and from these were transported to one of the ten relocation centers administered by the War Relocation Authority (WRA), an agency created by Executive Order 9102 of March 18, 1942 (7 Fed. Reg. 2165). When these movements had been completed, a total of 120,313 persons had been distributed among the relocation centers,¹⁰ with provision having been made for the placement of some 16,000 at Tule Lake, the center with which this proceeding is primarily concerned (T&N, 27). None of the appellees, however, were assigned directly from assembly centers to Tule Lake. Their ultimate arrival at that Center (except for the appellee *Inouye*)¹¹ occurred as a result of a later regrouping or "segregation" of evacuees pursuant to WRA policies and directives hereinafter described.

Due to the swiftness with which evacuation had been required many of the evacuees undoubtedly suffered severe financial

⁷ See *Hirabayashi v. United States*, 320 U. S. 81 and *Korematsu v. United States*, 323 U. S. 214.

⁸ Cf. Executive Order #9066 (7 F. R. 1407); *Korematsu v. United States*, 323 U. S. 214, 217-219; *Thomas and Nishimoto*, *op. cit.*, *supra*, 10, 24.

⁹ See note 6, *supra*.

¹⁰ WRA, *The Evacuated People, A Quantitative Description* (GPO, 1946) pp. 2, 9. For the convenience of the Court copies of this publication have been lodged with the Clerk.

¹¹ As before stated, *Inouye*, so far as the record shows, was located in the Manzanar Center, and never at Tule Lake.

losses (see, T & N, 14-17).¹² The initial attitude of the first evacuees to reach Tule Lake, however, appears in the main to have been one of cooperation with the War Relocation Authority (Ibid. 38). The deterioration of this attitude which ensued appears to have been caused, in part, by the curtailment of many projects originally planned by the WRA for the benefit of the evacuees (see, T&N, 25) and by the establishment of a stringent wage policy for work performed at the Center (see, Ibid. 33-35). Another major factor in the growth of discontent among the evacuees at Tule Lake seems to have been the rapid development of intergroup antagonisms, which arose both between early and later arrivals at the Center and between the older noncitizen evacuees known as Issei and the first generation of American-born persons of Japanese ancestry known as Nisei (T&N, 40-41).¹³ In August of 1942 general dissatisfaction with working conditions culminated in two short-lived strikes and in October of the same year a concerted protest developed leading to the discharge of an unpopular Caucasian assistant mess supervisor (T&N, 41-43). The cleavage between Nisei and Issei was manifested in November by the nearly successful rejection of all "self-government," apparently because of a WRA ruling that only citizens were eligible for election as popular representatives (T&N, 44-45).

Registration.—Although, as above stated, plans for large scale, voluntary resettlement of evacuees had been temporarily

¹² By Public Law 886, 80th Congress, approved July 2, 1948, the Congress recognized a moral obligation on the part of the United States to reimburse evacuees for property losses that are "a reasonable and natural consequence of the evacuation," excluding, however, among others, "any claims * * * by or on behalf of any person who after December 7, 1941, was voluntarily or involuntarily deported from the United States to Japan, or by or on behalf of any alien who on December 7, 1941, was not actually residing in the United States."

¹³ A third distinct category of evacuees were known as Kibei—Japanese Americans born in the United States but who had returned to Japan to be educated in whole or in part in that country and had then returned to the United States. (See T & N, Note 7, p. 3.) While it is said that there were about "20,000 American-born evacuees who had been to Japan at some time" only about 9,000 "among the 72,000 American citizens in the evacuee population" had "received three or more years of education in Japan, particularly after the age of 13." These have been called "real Kibei." WRA, *A Story of Human Conservation* (GPO, 1946), pp. 6-7.

abandoned because of general hostility toward Japanese-Americans, the WRA in the fall and early winter of 1942 was still seeking expeditious methods of relocating them outside the Relocation Centers on an indefinite leave basis.¹⁴ Accordingly, WRA decided to make a blanket determination of persons eligible for indefinite leave, irrespective of whether or not these persons had yet indicated a desire to resettle (T&N, 55). In February 1943 all evacuees 17 years of age or older, save those who had already requested repatriation to Japan (T&N, 73, 76), were ordered to execute lengthy registration forms prepared by the War Department and WRA, jointly,¹⁵ together with abbreviated WRA leave-clearance forms (T&N, 58). As will appear herein, the crucial question was No. 28. Male citizens of Japanese ancestry 17 years of age and over were asked:

Question 28: Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any and/or all attack by foreign or domestic forces and foreswear any form of allegiance or obedience to the Japanese Emperor, or any other foreign government, power, or organization?

Female citizens were asked this question in a somewhat different form, as follows:

Question 28: Will you swear unqualified allegiance to the United States of America and foreswear any form of

¹⁴T&N, 54-55. The WRA publication, *The Relocation Program* (GPO, 1946), relates in some detail the Authority's experience in this field. Early relocations were slow due to cumbersome procedures and reluctance of evacuees to leave the centers (Id. pp. 18, 30, 31). The registration process, hereinafter outlined, "clarified leave for most of the evacuees" (Id. p. 24) and by "early summer 1943 the flow of evacuees from the centers was gaining momentum" (Id. p. 30). During this period WRA promoted relocations by grants of financial assistance (Id. p. 25), by furnishing factual information concerning areas offering employment (Id. pp. 33-34), and by otherwise encouraging resettlement (T&N, 103). However, it was the declared policy of WRA not "to force people to relocate when they did not want to be relocated" (T&N, 59. But, cf. Id., 103).

¹⁵The interest of the War Department in the registration program was to obtain data upon which to recruit combat teams of American citizens of Japanese ancestry to serve with the armed forces (R. 93). Question No. 27 on this form inquired as to the willingness of the registrant to serve with the armed forces of the United States.

allegiance or obedience to the Japanese Emperor or any other government, power, or organization? ¹⁶

At Tule Lake vigorous and prolonged resistance developed against the process of registration (see T&N, 72-80). Belated recognition of the fact that evacuees who had already requested repatriation had been made exempt from compulsory registration led to a widespread movement among the Tule Lake evacuees to obtain repatriation request blanks (T&N, 76). When these were refused with the announcement that contemporaneous repatriation requests would not be accepted in lieu of registration, many Tule Lake evacuees refused absolutely to register. Thirty-four Nisei residing in Block 42,¹⁷ a focal point of such resistance, were ultimately jailed (T&N, 77). A substantial number of Kibei¹⁸ banded together in the drafting of petitions demanding that they be treated as Japanese nationals and reaffirming their "absolute refusal" to register. Not until February 23, 1943, did this resistance movement subside following the issuance of an Army statement clarifying the relation of the questionnaire to the selective service program (T&N, 79-80). The registration of citizens, which had been scheduled to terminate on March 2, 1943, was thereafter continued until March 10. Alien registration, begun on March 3, extended until March 25. At the termination of these periods some 600 male Nisei and Kibei and slightly over 500 female

¹⁶ Although it was originally contemplated that Question 28 in the form given immediately above would be asked of Japanese aliens, it was soon realized that since Japanese aliens are ineligible for American citizenship, an affirmative answer to this question would be tantamount to a renunciation of any claim to Japanese citizenship and would place them in the status of "stateless persons" (T & N, 60-61). Accordingly, Question 28 was modified and, as submitted to Japanese aliens, read as follows:

Question 28: Will you swear to abide by the laws of the United States and to take no action which would in any way interfere with the war effort of the United States?

¹⁷ The block, composed of 14 barracks, was the basic unit of the evacuee community. Ultimately, following segregation, although not at this time, there were 80 blocks at Tule Lake. Nine blocks constituted a ward, and each of the wards was separated from others by firebreaks 200 feet wide. For a description of the physical features of the Tule Lake Center see T&N 28-30.

¹⁸ See note 13, *supra*.

citizens had failed to register;¹⁹ the numbers of male and female Issei who failed to register are not available but it has been estimated that male alien nonregistrants comprised 41 percent, and female alien nonregistrants 30 percent, of all evacuees at Tule Lake falling into these respective categories (T&N, 82). When these nonregistrants are grouped with those evacuees giving a "no" answer to Question 28,²⁰ it is revealed that 49 percent of all male citizen evacuees 17 years of age and over at Tule Lake, and 42 percent of the entire evacuee body at Tule Lake in the same age category either gave nonaffirmative replies to Question 28 or refused to register (T&N, 62-63). By contrast, the over-all percentage of evacuees 17 years of age and over giving nonaffirmative replies or refusing to register at the other nine relocation centers was about 10 percent (Ibid.).

Segregation.—On July 15, 1943, the WRA issued an administrative instruction designating the Tule Lake Relocation Center as the facility for the segregation of "those persons of Japanese ancestry residing in relocation centers who by their acts have indicated that their loyalties lie with Japan during the present hostilities."²¹ Those evacuees then at Tule Lake who had not indicated Japanese loyalties were to be shifted from Tule Lake to another relocation center of their choice. The persons designated for segregation in Tule Lake comprised all evacuees falling into any of three categories:

¹⁹ Among the male nonregistrant citizens were some 100 Kibei who had been removed from the Center because of their adamant stand against registration (T&N, 82).

²⁰ See p. —, *supra*.

²¹ WRA administrative instruction #100, July 15, 1943, as quoted by Thomas and Nishimoto, *op. cit.*, *supra*, p. 84. This administrative action appears to have been taken in response to Senate Res. 166, 78th Cong., 1st Sess., approved July 6, 1943 (79 Cong. Rec. 7288) whereby the WRA was requested "to take such steps as may be necessary for the purpose of segregating persons of Japanese ancestry in relocation centers whose loyalty to the United States is questionable or who are known to be disloyal. * * * for the purpose of establishing additional safeguards against sabotage by such persons."

The administrative regulations relative to the establishment, operation and government of, movements to and from, and residence in the segregation center are set forth in full in Appendix C of this brief *infra*. These regulations constitute Chapter 110 of the WRA Manual. Dates of issuance are shown and superseded provisions if any, are indicated, following the text of particular regulations.

I. Applicants for repatriation or expatriation to Japan.²² (W. R. A. Manual, Chap. 110 § 110.3.1A, Appendix C, *infra*.)

II. Persons who refused to answer or gave negative answers to Questions No. 28 (*supra*, p. 12) and who had not changed their answers prior to October 6, 1943 [originally July 15, 1943], except those who changed their answers thereafter and satisfied the Project Director that the changes were bona fide (Id. § 110.3.1B).²³

III. Persons denied leave clearance on grounds relating to security risk (Id. § 110.3.1C).²⁴

Members of the immediate families of persons in the above categories were permitted to go to or remain in the Tule Lake center with them if they wished to do so.²⁵

²² The Project Director had discretion to make exceptions in hardship cases (§ 110.3.1A). Instructions were given concerning necessary arrangements for exchanges during the war, if desired (§ 110.2B). This category of segregees was the largest at Tule Lake. It numbered 7,222 of which 4,698 were American-born. (*The Evacuated People*, p. 169. See note 10, *supra*.)

²³ "Each person who had given a negative answer (or none at all) to the loyalty question was asked if he wished to change his answer." WRA Semi-Annual Report, July 1 to December 31, 1943, p. 3. (See, also T & N, 86). This classification totaled 4,785 of which 3,274 were American born. (*The Evacuated People*, *supra*, p. 169.)

²⁴ There were only 514 segregees in this category, of whom 348 were American-born (Ibid.).

²⁵ This classification, obviously composed largely of children too young to register (see Id., Table 43a, p. 107), numbered 5,615, of which 4,080 were American-born (Id. p. 169).

Appellees *Murakami, Sumi* and *Shimizu*, alleged that they went to Tule Lake because their husbands had applied for repatriation (R. 5, 6, 7, 314, 317). While these allegations may be substantially correct in view of their opportunities voluntarily to change their positions with reference to segregation, they should not be construed as averments that these appellees were not themselves properly subject to segregation independently of any action by their husbands. The allegation (R. 12, M. R. —) by these appellees, that they were found by WRA to be free of any suspicion of disloyalty (which was denied in both actions R. 21, stipulation M. R. —), and the finding of the courts below (R. 353, M. R. —) that they had been found free of any suspicion of disloyalty to the United States, are utterly without support in the record. It may be that this allegation and finding were based upon the supposition that none of them technically fell within segregation classification I-III above. (Cf. *Dembitz, Racial Discrimination and the Military Judgment* (1944), 45 Columbia Law Rev. 175, 221.) If so, this supposed fact, even if it would be sufficient to support the allegation and finding, nowhere appears in the record and cannot be conceded.

No person thus transferred or remaining in the Tule Lake center could be granted leave clearance directly from the center (Id. § 110.9.1) but provision was made for transfers from Tule Lake to other centers, from which leave clearances could be obtained (Id. § 110.9.2). Persons denied such transfers could file appeals with the Board of Appeals for Leave Clearance (Ibid).²⁶

By June of 1944, when the segregation process had been substantially completed, transferees from other centers comprised 66 percent of the Tule Lake evacuee population (T&N, 107). The remaining 34 percent consisted of evacuees who were resident at Tule Lake prior to segregation and who remained at that center. They became known as "Old Tuleans." About half of the American-born population over 15 years of age, including appellees, *Sumi* and *Shimizu* (R. 152, 197), had received education in Japan (T&N, 370; cf. *The Evacuated People*, p. 176).

As previously indicated, the entire evacuee body at Tule Lake following segregation was not composed solely of persons segregated because falling within Classes I-III. In addition to the technically "loyal" evacuees who either migrated to or remained at Tule Lake in order to be with members of their immediate families (see note 25, *supra*), approximately 1,100 Old Tuleans, who were eligible for resettlement in view of their affirmative answers to Question No. 28, refused to leave (T&N, 104).²⁷

Events Following Segregation.—What follows can be little more than a calendar of events. Much as had arrivals at Tule Lake in June of 1942 found themselves at a disadvantage with respect to earlier settlers, so now did transferees under the segregation program find themselves in the position of disadvantaged migrants with respect to the Old Tuleans, who occupied both the best jobs and the best housing facilities (T&N, 109—

²⁶ The record does not show the extent to which the procedures for transfer from Tule Lake were invoked. It does establish, however, that they were employed to some extent. (R. 214; T&N, 276. Cf. R. 50, 321). See, also, *The Evacuated People* (note 10, *supra*) at p. 40.

²⁷ Table 77 of *The Evacuated People*, *supra*, at p. 169, makes no special mention of this group of Old Tuleans since all "but 34 * * * eventually 'legitimized' their status" (T&N, 104 n).

110). In September and October 1943 sporadic protests against this situation culminated in several minor outbursts of violence which sought principally to subordinate American customs to those of the Japanese (see *Ibid.*, 111). On October 15 a truck carrying evacuee farm workers to the fields overturned, seriously injuring four and killing one. Approximately 800 farm workers, seeking further safeguards against such accidents and compensation for those injured, ceased work (*Ibid.*, 114–119). Although evacuees representing the farm group repeatedly sought to negotiate concerning these grievances and others, the Center's administrative officers, faced with the possible loss of crops at harvest time, terminated the employment status of the farm workers and brought in evacuees from other centers at much higher wages to do the harvesting at Tule Lake (*Ibid.*, 119–128). This move in turn generated resentment and on November 1, a tremendous crowd of evacuees, having learned of the recent arrival of WRA Director Dillon Myer at the Center, surrounded the administration headquarters to await the presentation of their grievances to Myer by a committee of their representatives.²⁸ Evacuees stationed themselves at the doors of the administration building to prevent the departure of any of the Caucasian personnel (*Ibid.*, 131–132). During the time negotiations were being conducted a number of evacuees, without the knowledge of the negotiating committee, entered the separate hospital building and attacked the Caucasian Chief Medical Officer of the Center (*Ibid.*, 132–133). On November 4, following a further outbreak of violence, troops were called into the Center and the Army took over its administration from WRA personnel. Martial law was declared on November 13. Thomas and Nishimoto have described and documented the events which occurred during Army control of the Center, which continued until January 15 (see *The Spoilage*, pp. 147–183) and have summarized these 10 weeks as follows:

²⁸ This committee had been selected by the membership of the *Daihyo Sha Kai* or representative body, the 64 members of which had themselves been elected, one from each block, at a general evacuee election held on October 16, 1943. T&N 116–119.

The * * * period was one of turmoil, idleness; impoverishment and uncertainty for the general population, who continued their partial strike and passive resistance. For the leaders of the *Daihyo Sha Kai*,²⁹ for various other alleged instigators of the "riot," and for numbers of other individuals who had opposed the administration in one way or another, it was a period of increasingly severe repression: midnight pick-ups, isolation and incarceration in a stockade and "bull pen." It resulted in the disintegration of the *Daihyo Sha Kai* as a political organization, the emergence of an organization with collaborative aims (Coordinating Committee) and of an underground antiadministration pressure group (Resegregationists). Coincident with the development of these divergent policies came a sharpening of the distinction between the "disloyal" and the "loyal," an intensification "of race-consciousness," and a wave of hate, fear, and suspicion toward dissenters, "fence-sitters," collaborationists and informers (T&N, 147).

The ultimate termination of Army control of the Tule Lake administration came about following the holding of a referendum among evacuees. The issue posed was whether all of the evacuees should immediately return to work or whether what was termed the "status quo" (involving continued work stoppage by the farm workers and others and the continuation of "passive resistance") should be further maintained. Voting was by secret ballot, with soldiers present at every polling place. The results showed 4,593 in favor of a return to normal conditions; 4,120 in favor of maintaining the "status quo" (T&N, 180-181). Although individual preferences are, of course, unknown, a consideration of the results per voting unit reveals a dichotomy of attitudes between transferees and Old Tuleans. Generally speaking, and with some exceptions, blocks having the highest proportion of transferees voted most strongly in favor of continued resistance; correspondingly blocks principally composed of Old Tuleans in the main voted in favor of a return to work (T&N, 182-183). When the results were

²⁹ See note 28, *supra*.

known, martial law was lifted and on January 15, 1944, the management of the Center was returned to the WRA (Ibid.).

The ensuing months witnessed the development of trends noted in connection with the period of Army control. A major source of grievance to the evacuees was the continuation of the "stockade", originally established by the Army for the confinement of persons participating in the November 4 disturbance (T&N, 284-285). Thereafter repressive measures against "status quo" leaders increased to the extent that there were 247 evacuees incarcerated in the stockade at the time the referendum was held in the middle of January (Ibid., 195), and although the management of the Center was otherwise returned to the WRA following the referendum, the Army continued in control of the stockade until May 25 (Ibid., 248-249). Even thereafter the stockade was continued in existence, with further "pickups" tending to offset releases. Some 16 evacuees originally incarcerated during the period of complete military control were still being held on July 19 when these detainees embarked on a hunger strike (Ibid., 292-294). A Center-wide petition seeking their release was circulated on July 28 and is said to have been signed by over 8,000 residents (Ibid., 296-297). The hunger strike, interrupted by the hospitalization of the detainees on July 29, was again resumed following their return to the stockade on August 5 and lasted until August 13, at which time the administration capitulated by promising their quick release (Ibid., 295-299, 289).

The existence of the stockade and the frequency of "pick-ups" during the period above described magnified tremendously the always latent fear and hatred of informers at the Center. An awareness that informers, termed "*inu*" by the evacuees,³⁰ might be present to report antiadministration utterances or acts was manifested as early as August 1942 (T&N, 42). Suspicion of *inu* redoubled when the residents observed the leaders of the opposition or "status quo" groups being thrown into the stockade (Ibid., 262), and received factual confirmation when the administration on or about February 1, 1944, began the use of

³⁰ The brand "*inu*" (literally, dogs) dates back to a period long before the War and was linked with the code of the Japanese immigrants which forbade divulging detrimental information outside the racial group (T&N, 20-21).

hired evacuees "fielders" to report the presence of "agitation" or "general unrest" in various blocks (Ibid., 205). The underground groups, below described, were quick to utilize the generally felt antipathy toward informers for political purposes (Ibid., 225). One rumored to be an *inu* suffered severe social ostracism (Ibid., 225, 264), as well as the danger of physical violence (Ibid., 225), and anyone making proadministration or antiopposition statements was quickly branded *inu* by the latter (Ibid., 225, 291). During June 1944 three persons considered *inu* were attacked and beaten by other evacuees (Ibid., 264-265, 269); and on the night of July 2 occurred the celebrated murder of Hitomi.

Hitomi, referred to in *The Spoilage* under the pseudonym Takeo Noma (see p. 374), was the general manager of the Center's Cooperative Enterprises, an organization which ran evacuee-patronized canteens at Tule Lake. Long regarded by the evacuees as beneficiaries of a vested interest and hence proadministration, the Cooperative's Board of Directors were particularly vulnerable to the charge of being *inu*, and Hitomi was frequently referred to as "Public *Inu* Number One" (T&N, 271). While the cause of Hitomi's murder has been the subject of some speculation (see R. 127, T&N, 271), its repercussions were widespread. Some 15 men under the stigma of being *inu* were quickly taken into protective custody and three of these, at their own request, were transferred to other relocation projects (R. 49, T&N, 276). The Coop's Board of Directors resigned in a body (R. 49, T&N, 273). The evacuee internal security or police force, long uncomfortable because ostensible agents of the administration, also resigned (R. 49, T&N, 277-278). Only with difficulty was the administration able to restaff the police force with evacuees henceforth termed "wardens" (T&N, 281). It was tacitly, and indeed to some extent explicitly, understood that these wardens should act only as peace officers and that "problems arising between the administration and the residents do not come within the jurisdiction of the force" (T&N, 281; R. 49).

Concomitantly with the abandonment of repressive measures, the replacement of the evacuee police force with an organization of wardens, the discrediting and flight of certain

proadministration figures, and the failure to apprehend the evacuees responsible for the *inu* assaults, there occurred an emergence into the open of Japanese nationalist organizations whose activities had theretofore been carried on secretly. In the early development of these organizations emphasis was centered on a plan for the "resegregation" of evacuees at Tule Lake which entailed a further division of the residents into two camps—those "truly disloyal" and those whose loyalties were uncertain or pro-American (T&N, 229–231). In March 1944 a letter addressed to the Attorney General which was ultimately channeled to the administrative officers at Tule Lake sought permission to circulate a petition for the signatures of those residents who desired repatriation or expatriation to Japan and who, in the meantime, wished to be separated from those in the Center who did not so desire (T&N, 230–231). The administration gave somewhat equivocal sanction to this movement on April 7, 1944 (Ibid., 231), only to withdraw its permission entirely on April 10 with the statement that it had no intention of allowing resegregation (Ibid., 233–234). In the meantime the petition had circulated and some 6,500 signatures, including those of minors, had been obtained (Ibid., 233). On April 24, and again on May 30, leaders of the resegregation movement sought to enlist the aid of the Spanish Consul at San Francisco in achieving these aims (Ibid., 234–235).³¹

On December 13, 1943, the Spanish Consul, then investigating the causes for the declaration of martial law at Tule Lake, had met with partisans of the "status quo" and had been asked by them that "truly disloyal Nisei" be given the status of Japanese nationals so that they might come within the jurisdiction of the protecting Spanish authorities (T&N, 309). Upon the enactment on July 1, 1944 of the renunciation statute, the resegregationists made renunciation a focal point of their policies, but continued in the meantime to press for resegregation (Ibid., 308–311). By this time the movement had become well organized; representatives had been appointed in every block and had been coordinated under ward

³¹ The government of Spain took over the protection of the interests of Japan during the war.

representatives, who in turn formed a central committee (Ibid., 307). "Educational lectures" given by the leaders placed stress on the certainty of a Japanese victory in the Pacific and expounded Japanese political ideologies (Ibid., 308). On August 12, the first open meeting of a resegregationist organization, the *Sokoku Kenkuyu Seinen Dan*,³² occurred. Propitiatory only in its expressed desire to avoid "center politics" and any infractions of project regulations, the Sokoku was otherwise devoted to nationalistic aims (Ibid., 311-312). Its program embraced Emperor worship, the glorification of Japanese war aims, and entailed outdoor exercises of a militaristic nature for its members, who wore uniform costumes featuring the emblem of the Rising Sun (Ibid., 312-313). A central office, similarly embellished, was established in Block 54, where anyone speaking English was fined. Daily ritualistic exercises culminated on the 8th of each month with the holding of ceremonies at which prayers for a Japanese victory were offered (Id., 320).³³

A parallel organization to the *Sokoku*, the *Sokuji Kikoku Hoshi Dan* (Organization to Return Immediately to the Homeland to Serve), was established in November, 1944, for older resegregationists. Membership was limited to those who had signed the resegregation petition (see *supra*, p. 21), who wished an immediate return to Japan, and who had pledged absolute loyalty to Japan and a willingness "to sacrifice life and property in order to serve our mother country in time of unparalleled emergency" (T&N, 322). Female relatives of the *Hoshi Dan* and the *Hokoku*, the latter a successor organization to the *Sokoku*,³⁴ became members of an organization commonly known as the *Joshi Dan* (Ibid., 325).

Thomas and Nishimoto state that in late 1944, the resegregationist organizations claimed as members about 32 percent

³² Literally, Young Men's Association for the Study of the Mother Country.

³³ In Japan, the date of the Pearl Harbor attack was December 8, 1941.

³⁴ The change apparently was one of name only and was explained by resegregationists as having been adopted to signify that the period of cultural preparation for the young men had been completed and that they were now ready for service to the Japanese government. *Hokoku Seinen Dan* may be translated as "Young Men's Organization to Serve Our Mother Country" (T&N, 322-323).

of the Tule Lake population over 17½ years old (T&N, 328). It is not entirely clear whether this percentage figure represents the proportion that the members of the exclusively male *Hokoku Seinen-Dan* and *Hoshi Dan* bore to the entire Tule Lake population over 17½ or whether members of the *Joshi Dan* (Young Women's Organization) are also included. In any event, the dichotomy between transferees and Old Tuleans is again evident. Whereas 45 percent of all transferees were resegregationist members, only slightly over 8 percent of the Old Tuleans participated in the resegregationist movement (Ibid.).

The Renunciation Period.—The enactment of the renunciation statute on July 1, 1944, was reported in the Center newspaper on July 13 (T&N, 310) and numerous requests for permission to renounce began to come into the Department of Justice in the latter part of that month (R. 106). As previously stated, the resegregationists immediately made renunciation a focal point in their policies (T&N, 310). Japanese short-wave propaganda concerning alleged naval victories was spread and discussed throughout the Center (T&N, 325). Rumors developed to the effect that those who did not renounce their citizenship (1) would be drafted into the Army; (2) would be ineligible for expatriation to Japan and could not, therefore, accompany their repatriating parents; and (3) would be forced to leave the Tule Lake Center and resettle (T&N, 326). One leader argued, in effect, that renunciation involved no risk because the statute was unconstitutional and evacuees could not be held responsible for their actions in view of the general conditions in the Center (Ibid.).

The procedures set up by the Department of Justice for renunciation were announced to the Center through its newspaper on October 26, 1944 (T&N, 323). These procedures were prescribed by the Attorney General's Regulations set forth in Appendix B, *infra*. The appellee, Shimizu, requested an application form on December 1 (R. 193). On December 6, a representative of the Department of Justice arrived at Tule Lake to open hearings for renunciation and took up first the applications to renounce which had been made by the resegregationist leaders (R. 107-110; T&N, 332). On December 15,

intracenter opposition to the resegregationists culminated in a brief scuffle between a representative of each faction, one wielding a stick and the other a mop (R. 85). The defeat of the resegregationist champion greatly weakened the prestige and position of that organization (T&N, 329-332). While hundreds of requests for renunciation forms were made prior to December 26, 1944 (R. 106), the vast majority of them were not received by the Department of Justice until on and after that date.

On December 17, 1944, the Western Defense Command announced that effective as of January 2, 1945, the original exclusion orders, whereby persons of Japanese ancestry had been forbidden residence on the West Coast, would be rescinded (T&N, 333). On December 18, the Supreme Court handed down its decisions in the *Korematsu* and *Endo* cases.³⁵ On the same day came announcement of the decision of the WRA to force resettlements by liquidation of relocation centers within a year.³⁶ As an aspect of these radically revised plans, the Army, on December 19, announced a reprocessing of the residents of the Tule Lake center to determine which individuals would be eligible for clearance and which would be detained under exclusion orders (T&N, 333-334).

On Tuesday, December 26, 1944, approximately two thousand pieces of mail were received in the Department of Justice from Tule Lake, indicating a desire to renounce citizenship (R. 112). Appellee, *Sumi*, requested an application form at about this time (R. 148). On December 27, 1944, seventy *Seinen-Dan* and *Hoshi-Dan* leaders, most of whom were renunciants,

³⁵ In *Korematsu v. United States*, 323 U. S. 214, the Court upheld the constitutionality of the exclusion orders. In *Ex parte Endo*, 323 U. S. 283, it struck down the WRA leave clearance procedures as applied to an admittedly loyal citizen of the United States. The questions of whether or when these Court decisions may have come to the attention of the segregees and what effect they may have had upon their decisions to renounce, are not touched upon in the present record. However, it is clear that citizen evacuees at all times had access to newspapers, magazines and radios, including some short-wave sets. See, e. g., R. 141, 239, 241, 321; T&N, 98, 325. Cf. Dembitz, *op. cit. supra*, note 25, at p. 221.

³⁶ *The Spoilage* (T&N, 333) incorrectly gives the date of the WRA announcement as December 17, 1944. See Annual Report of the Secretary of the Interior for the fiscal year ended June 30, 1945, pp. XXXVIII, 275.

were removed from Tule Lake for confinement at Santa Fe, New Mexico, "as undesirable alien enemies" (T&N, 339). The *Seinen-Dan*, which immediately elected new officers to replace those interned (T&N, 340), intensified its nationalistic activities and issued copious propaganda literature exhorting the residents to become "true Japanese" through renunciation, pointing out that the organization's aim of resegregation for which it had been striving so long was at last about to be achieved (Ibid., Cf. R. 119-120). Appellee, *Shimizu*, who had requested her application form on December 1, 1944, and whose husband, as an active pro-Japanese leader (R. 8), had been removed to Santa Fe (R. 197), received her renunciation hearing and executed her renunciation form on January 16, 1945 (R. 196-198).

On January 24, the Department of Justice published an open letter to the Chairman of *Hoshi-Dan* and *Hokoku Seinen-Dan* condemning the activities of the organizations and ordering them to cease (T&N, 356). On January 26, 1945, the second group of organization officers was removed to the alien enemy internment camps (R. 121). In all, 171 men were removed for internment as alien enemies on this date (T&N, 356). On January 29, WRA gave assurances that "those who do not wish to leave the Center at this time are not required to do so and may continue to live here or at some similar center until January 1, 1946" (R. 79, 137; T&N 356). Appellee, *Sumi*, formally renounced her citizenship on February 1, 1945 (R. 151-154).

On February 11, 1945, another contingent of about 650 organization members of *Hokoku Seinen-Dan* and *Hoshi-Dan* were served with internment notices and removed (R. 122; T&N, 357). Appellee *Murakami* requested an application form on February 12, 1945 (R. 158). On March 4, the Department of Justice arrested and interned a fourth contingent of 125 men (T&N, 357). Although additional persons deemed undesirable by WRA were thereafter interned at the request of that agency, this group was the last of those considered by the Department of Justice to be troublemakers (R. 129). On March 14, 1945, appellee *Murakami* executed her formal renunciation (R. 161-164).

Seven out of every ten citizen evacuees at Tule Lake renounced their United States citizenship. An analysis of these renunciants shows that males predominated, for 77 percent of all male citizens were renunciants as compared to 59 percent of all females. It also demonstrates a predominance of transferees among the renunciants; 78 percent of such residents became renunciants as compared with 49 percent of the Old Tuleans (T&N, 359).

The renunciations of the three appellees who were resident at Tule Lake were approved by the Attorney General "as not contrary to the interests of national defense" on May 3, 1945 (R. 154, 164, 199). Commencing in June 1945 the Department of Justice began to receive a number of requests to withdraw renunciations previously approved, but the vast majority of such requests were not received until after the formal acceptance by Japan of the terms of surrender on August 14, 1945 (R. 129-130).³⁷ *Sumi, Murakami* and *Shimizu*, respectively, made such requests on August 30, November 5, and December 3, 1945 (R. 155, 165, 201).

III. Proceedings below

Upon the basis of the stipulation between the parties (*supra*, pp. 8-9) and upon a record consisting of the various affidavits filed in connection with the respective motions for summary judgment, the district court in No. 11839 rendered an opinion on September 5, 1947 (R. 331-339),³⁸ and on September 18, 1947, filed findings of fact (R. 341-367) and conclusions of law (R. 367-368). The judgment of the district court in No. 11839 declaring the appellees' renunciations null and void and restoring them to the rights of American citizenship was entered September 18, 1947 (R. 369-370).

³⁷ According to the New York Times of Tuesday, August 14, 1945, p. 1, the announcement was first made by the official Japanese news agency early that morning. The next two days were proclaimed holidays by the President. VJ-day was proclaimed on September 2, 1945, upon the signing of the formal surrender agreement. However, it has been suggested that as late as October 1945, some segregees continued to believe that Japan was winning the war (R. 141; Cf. T&N, 308, 325).

³⁸ This decision is officially reported at 73 F. Supp. 1000.

No opinion was rendered by the district court in No. 22082. The court entered findings of fact and conclusions of law, which are identical with those filed in No. 11839 except as to jurisdiction and, of course, Yuichi Inouye,³⁹ on August 27, 1948 (M. R. —). The judgment of the court also voiding the appellee's renunciations and restoring them to their rights of citizenship, and further ordering the Secretary of State to treat them as citizens of the United States, was entered on the same day (M. R. —).

SPECIFICATION OF ERRORS RELIED UPON

In No. 11839, the district court erred:

(1) In holding that it had jurisdiction under the provisions of Section 503 of the Nationality Act of 1940 (8 U. S. C. 903).

(2) In holding that it had jurisdiction under the provisions of Section 274 (d) of the Judicial Code, as amended (now 28 U. S. C. §§ 2201, 2202), in invoking *sua sponte*, the provisions of that statute in aid of its jurisdiction, and in issuing a declaratory judgment on the basis thereof.

(3) In failing to dismiss the proceedings for want of jurisdiction.

(4) In finding and concluding that the renunciations of United States citizenship heretofore executed by the appellees, Murakami, Sumi, and Shimizu were involuntary and were the result "of mental fear, intimidation, and coercions depriving them of the free exercise of their will."

(5) In declaring said renunciations to be null and void and cancelled, and in restoring said appellees to the rights of the United States citizenships.

(6) In failing to hold that said renunciations were voluntary and binding and that said appellees had not proven otherwise.

(7) In finding that the renunciation of the appellee Inouye was the result of undue influence and parental coercion.

(8) In holding that the renunciation of Inouye is void and of no force or effect because said renunciation was executed when Inouye was 18 years of age.

³⁹ As before stated, Inouye is not a party to the proceedings in No. 22082.

(9) In declaring the renunciation of said Inouye to be null and void and cancelled, and in restoring Inouye to the rights of United States citizenship.

(10) In failing to hold that the renunciation of Inouye was a voluntary act and in failing to hold that the renunciation of one 18 years of age under the provisions of Section 401 (i) of the Nationality Act of 1940, as amended (8 U. S. C. 801 (i)) was valid and effectual to cause a loss of United States nationality.

* * * * *

In No. 12082, the district court erred:

(1) In finding and concluding that the renunciations of United States citizenship heretofore executed by the appellees Murakami, Sumi, and Shimizu were involuntary and were the result of mental fear, intimidation, and coercions depriving them of the free exercise of their will.

(2) In declaring said renunciations to be null and void and cancelled, in restoring said appellees to the rights of United States citizenship, and in further ordering the appellant, as Secretary of State, to recognize and treat said appellees as citizens of the United States.

(3) In failing to hold that said renunciations were voluntary and binding and that said appellees had not proven otherwise.

SUMMARY OF ARGUMENT

I. A judicial inquiry into the matter of an individual's United States nationality is sanctioned under Section 503 of the Nationality Act of 1940 when, and only when, the individual is claiming a right or privilege by virtue of such nationality and an agency or department of the Government is denying the claim on the ground that he is not a United States national. The proceedings in Nos. 11839 and 12082 were both brought under Section 503. The dispute in No. 12082 arises by reason of the refusals, following requests, of the State Department to issue passports to the three appellees therein. Since these refusals were made on the ground that such appellees were not United States nationals by reason of their prior renunciations of citizenship under Section 401 (i) of the Nationality Act, a dispute exists within the contemplation of Section 503, and the court below properly assumed jurisdiction of that case.

In No. 11839, however, the operative facts requisite to an exercise of jurisdiction under Section 503 are lacking. The record therein fails to demonstrate that the four appellees thereto have sought to obtain from the respondents any right or privilege which might be afforded them as nationals of the United States, and plainly neither respondent is denying them such rights or privileges. With respect to the Attorney General (since Section 503 permits suit only against the "head of the department" the appellant Carmichael, a subordinate of the Attorney General, was improperly joined), it is submitted that his prior action in approving appellees' renunciations constituted a recognition, not a denial, of a right of citizenship, that he lacks authority to rescind such renunciations, and that in the absence of any outstanding denial of such a right or privilege at the time suit was commenced or presently, the suit in No. 11839 is not within the terms of Section 503.

For similar reasons, a judgment under the Federal Declaratory Act (invoked, *sua sponte*, by the court below) is improper. As above demonstrated, no case or controversy in the constitutional sense exists between the parties, and the Declaratory Judgment Act did not expand ██████ the judicial power beyond the scope of that requirement. Moreover, since the court below

did not acquire jurisdiction under Section 503, it lacked authority to proceed against the Attorney General in his official capacity under a different statute.

II. This court, we submit, may and should give only slight weight to the findings and conclusions below that the renunciations of the three appellees common to both appeals were the result of "mental fear, intimidation and coercion." E. g. *Stork Restaurant v. Sahati*, 166 F. (2d) 348 (C. C. A. 9). Examination of the record demonstrates that such a conclusion is supported neither by clear and convincing, nor even by a preponderance of, evidence in any of these cases. The process of renunciation, designedly made cumbersome for the precise purpose of preventing hasty or coerced action, was carried through by these renunciants; and despite the fact that several months thereafter intervened before the Japanese capitulation the appellees did not seek to avoid the consequences of their actions until that event made it advantageous for them to do so. Examination, moreover, of the appellees' contemporaneous statements at the time of renunciation, wholly unrefuted and unexplained by them in this record, demonstrate that their decisions to renounce were voluntary. As against such evidences of motivation, there are in this record only the appellees' own affidavits from which a contrary conclusion might be drawn. It is plain, however, that the "law * * * assumes the freedom of the will as a working hypothesis" (*Steward Machine Co. v. Davis*, 301 U. S. 548, 589) and that one seeking to overcome this hypothesis must carry the burden of proof. E. g. *Hartsville Mill v. United States*, 271 U. S. 43. Appellees' affidavits, we submit, fail to do so when considered in conjunction with the evidence above summarized.

In the main these affidavits refer in conclusory fashion to conditions prevailing at Tule Lake during the renunciation period. The alleged existence of such conditions, of course, does not preclude a conclusion that many or all of the Tule Lake renunciants voluntarily desired to renounce, and without specific application to the cases of these appellees, reliance upon such conditions is manifestly indecisive. *Hartsville Mill v. United States*, supra. Examination of the entire record, moreover, leads as well to the inference that those of the Tule Lake

residents who did renounce (30 percent of those eligible to renounce did not do so) were predisposed toward renunciation as to a conclusion that any substantial number of them lacked freedom of choice in the matter. Furthermore, there is no acceptable evidence that violence was exerted during the renunciation period against any resident to force him to renounce or in consequence of his failure to renounce. Finally, it is suggested that one in fear of possible violence should he remain loyal to the United States would, unless persuaded by mere considerations of convenience, have sought transfer from Tule Lake rather than abjuring and renouncing "all allegiance to the United States of America."

III. The appellee Inouye, a party only in No. 11839 and consequently subject to the jurisdictional infirmities of that proceeding, has made no effort to prove that his renunciation was involuntary and accordingly the conclusion of the court below to that effect is unsupported. There is presented as to Inouye, however, the further question of whether the renunciation statute authorized such action on the part of an individual 18 years of age.

The renunciation statute was added by amendment to the Nationality Act of 1940. In enacting that Act the Congress as a matter of general policy reduced the age of competence for actions in respect of matters of citizenship from the common law age of 21 years to the age of 18 years. We submit for reasons hereinbelow detailed that the Attorney General, whose decision in such a matter carries a strong presumption of correctness for the reason that he participated in the drafting of the renunciation statute, properly acted in approving the renunciation of one 18 years of age and that such a renunciation is binding.

IV. Most of appellees' objections to constitutionality have no application to this case since the statute provided for voluntary, unilateral action on the part of renunciants. The contention that a natural-born citizen may not renounce is contrary to the authorities. The Congress considered carefully the constitutionality of the statute and passed it with knowledge of the evacuation and relocation programs. We submit that its constitutionality is not subject to serious question.

ARGUMENT

I. The issue of jurisdiction in No. 11839

What is here said with respect to the power of the Court to entertain the proceeding in No. 11839 will have practical effect only in the case of Albert Yuichi Inouye, for he alone among the four appellees in No. 11839 is not also an appellee in No. 12082. In the latter case the action was brought on behalf of Murakami, Sumi, and Shimizu (also plaintiff-appellees in No. 11839) against the Secretary of State whose subordinates have admittedly denied their applications for passports on the grounds that they are no longer United States nationals or citizens by reason of their prior renunciations under the renunciation statute (M. R. —). The jurisdiction of the court below in No. 12082 is therefore apparent under the provisions of Section 503 of the Nationality Act of 1940 (8 U. S. C. § 903), supra, p. 2, for the Department of State, of which the Secretary is the head, has thus denied to each of the three appellees a claimed "right or privilege as a national of the United States * * * upon the ground that he [she] is not a national of the United States * * *."

But while jurisdiction is conceded in No. 12082, no such concession is possible in No. 11839. That action was commenced against the Attorney General and a subordinate official of the Immigration and Naturalization Service of the Department of Justice. Paragraph IV of the amended complaint therein invoked, as did the complaint in No. 12082, the jurisdiction of the court on the basis of Section 503. The record in No. 11839, however, is wholly barren of any showing that the Attorney General or other official of the Department of Justice is, or was at the time of the commencement of that action, denying the plaintiffs therein any right or privilege as nationals of the United States.

Despite this fact the district court in No. 11839 concluded not only that it had jurisdiction on the ground alleged, i. e., section 503, but further that issuance of its judgment was authorized by the Federal Declaratory Judgment Act, Section 274, of the Judicial Code (28 U. S. C. 2201, 2202, formerly 28 U. S. C. 400). Clearly, neither statute warrants an exercise of the judicial power in the absence of some showing in No. 11839

that a justiciable controversy between the Attorney General and the appellees therein exists. See, e. g., *Federation of Labor v. McAdory*, 325 U. S. 450, 461. We submit that none does exist.

1. As becomes apparent from a mere reading of Section 503, a cause of action thereunder arises only when an individual "claims a right or privilege as a national of the United States [and] is denied such right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States." In the instant case the Attorney General, acting pursuant to the mandate of the renunciation statute and long prior to the institution of the present action, approved as not contrary to the interests of national defense the renunciations of United States citizenship duly executed by the appellees. Thereafter, each was interned as an alien enemy by orders of the Attorney General issued in the latter part of 1945 and each was ordered released from such confinement early in 1946.⁴⁰ Insofar as the record shows, however, this temporary internment under the provisions of the Alien Enemy Act of 1798⁴¹ generated no assertions by the appellees that their rights as alleged United States nationals were being denied. In any event any potentiality of controversy due to such internment disappeared upon their release long before the institution of this action and, indeed, if there had been an actual controversy, it would have become moot even if suit had been brought prior to such release. *Mills v. Green*, 159 U. S. 651. Neither the Attorney General nor any other official of the Department of Justice has taken any further action with respect to these appellees, and, we, submit, in the period since their releases they cannot point to any denial of a right or privilege by an official of the Department of Justice which might be asserted by a national of the

⁴⁰ *Murakami, Sumi*, and *Shimizu* were each ordered interned on August 31, 1945; they were ordered released on various dates all falling in February 1946 (R. 157, 168, 205). Inouye was ordered interned on November 29, 1945, and was released by order dated March 27, 1946 (R. 193).

⁴¹ 50 U. S. C. 21, made operative during World War II by a series of Presidential Proclamations. (See, e. g., Presidential Proclamation #2255 (10 Fed. Reg. 8947).)

United States. Accordingly, we submit that the power to entertain the proceeding in No. 11839 is not to be found in the provisions of Section 503 of the Nationality Act.⁴²

Appellees, moreover, cannot seek to justify the assumption of jurisdiction by the court below under this statute on the basis of an implied waiver by the defendants. The issue was at least inferentially posed by the pleadings. In answer to that paragraph of the complaint alleging "jurisdiction herein by virtue of Title 8, United States Code, Section 903," paragraph IV of the answer stated that the defendants: "Neither admit nor deny the conclusion of law comprising Paragraph IV of the said complaint, regarding the question of jurisdiction as a matter to be determined by the Court" (R. 17-18).⁴³ Moreover, the absence in the answer of a specific denial of the jurisdictional allegation of the complaint is immaterial. It was the duty of the court

⁴² The requisite denial of a claimed right cannot, of course, be found in the action of the Attorney General, taken long prior to the institution of suit, in approving appellees' renunciations. Consideration thereof by the Attorney General was a duty placed upon him by the renunciation statute and a refusal by him to act might of itself have constituted a denial of the rights therein conferred upon United States citizens to execute wartime renunciations of citizenship. Similarly a denial by the Attorney General of a request to rescind such a renunciation would not constitute a denial based upon the ground that the applicant was not a citizen or national of the United States since no authority is vested in the Attorney General to make such rescission.

⁴³ It is to be noted that par. III of the amended complaint alleges, *inter alia*, that, "the defendants deny that plaintiffs are nationals of the United States and have denied the plaintiffs rights and privileges as nationals of the United States * * *" (R. 3) and that in par. III of the answer (R. 17) this allegation would seem to have been admitted. In view, however, of the content of par. IV of the answer immediately following, this admission, if it be deemed relevant to the issue of jurisdiction, would appear to have been inadvertent. Moreover, since the allegation of the complaint is in the past tense, the admission may be taken as accurate in view of the fact previously referred to that appellees had been subject to brief internment as alien enemies, without, however, implying that jurisdiction existed at the time the action was commenced. In any event, it is axiomatic that jurisdiction of the subject matter may not be conferred by consent of the parties. *E. g. Gainesville v. Brown Crummer Inv. Co.*, 277 U. S. 54, 59; *Woolsey v. Security Trust Co.*, 74 F. (2d) 334, 335 (C. C. A. 5). This would seem especially to be true where, as here, suits against public officers in their official capacities, must satisfy the terms of Congressional consent. *Stanley v. Schwalby* 162 U. S. 255, 270; *Becker v. Cummings*, 296 U. S. 74, 78. Cf. *Minnesota v. United States*, 305 U. S. 382, 388-389.

below, just as it is now incumbent upon this Court, to determine the existence of jurisdiction. As stated by this Court in *Southern Pacific Co. v. McAdoo*, 82 F. (2d) 121, at 121:

The question we have to decide is whether the District Court had jurisdiction of this proceeding. Though not raised by the parties, this question is necessarily before us and must be decided. *Mitchell v. Maurer*, 293 U. S. 237, 244, 55 S. Ct. 162, 79 L. Ed. 338.

This Court has also held that an issue as to the jurisdiction of the trial court is not waived by failure to raise the issue at that stage, if it is subsequently raised on appeal. *The Taigen Maru*, 73 F. (2d) 922.

For the reasons hereinabove stated, we submit that the court below erred in concluding that it had jurisdiction by virtue of Section 503 and that this Court, if satisfied that jurisdiction was not conferred under the Declaratory Judgment Act, should reverse the judgment and dismiss the proceedings in No. 11839.⁴⁴

2. The foregoing considerations underline the absence in No. 11839 of an "actual controversy" requisite to the granting of relief under the Declaratory Judgment Act. Accordingly, we submit that the court below, which *sua sponte* invoked that Act in aid of its jurisdiction, erred in so doing.

The essence of what has occurred in No. 11839 is that the appellees therein have asserted that they are United States citizens and by bringing their suit have challenged the Attorney General to deny their assertions. (Cf. *F. W. Maurer & Sons Co. v. Andrews*, 30 F. Supp. 637 (E. D. Pa.)) No action is being

⁴⁴ Section 503 by its terms permits the institution of an action thereunder against the "head of * * * [the] department or agency" which is denying the claimed right or privilege. Thus even if the court below were correct in its assumption of jurisdiction on the basis of this statute, it would appear that its judgment should have been entered only against the Attorney General and that William A. Carmichael should have been dismissed as a party defendant. Carmichael, the substituted successor to Albert Del Guercio (R. 340), is a subordinate official of the Immigration and Naturalization Service and is thus a functionary of the Department of Justice. See 8 U. S. C. 100 whereby that Service "is created and established in the Department of Justice." Moreover, Carmichael, as is apparent from his title, is subordinate to the Commissioner of Immigration and Naturalization who is himself "an officer of the Department of Justice" who performs "all his duties under the direction of the Attorney General." 8 U. S. C. 101.

taken by the Attorney General in deprivation of the appellees' rights; no action is threatened. There are not here, as there were in *Perkins v. Elg*, 307 U. S. 325 (in which the issuance of a declaratory judgment concerning an issue of nationality was approved), threats of imminent deportation outstanding (see 307 U. S. at 328). In the circumstances of that case the issuance of the declaratory judgment was in aid of the traditional injunctive powers of a court of equity; here there is no occasion for judicial intervention and in fact none is permitted. The appellees find themselves in the disadvantageous position of having signed formal written renunciations of United States citizenship. Unless such renunciations were invalid, they have thereby lost their former nationality. This however, is not by fiat of the Attorney General but by Act of Congress—8 U. S. C. 801 (i). In short, there is no present controversy between appellees and the Attorney General. Nor, for that matter, has there ever been any controversy between them in respect of the subject matter of this action, since the Attorney General's approval of their renunciations was in compliance with their purported voluntary requests that he do so and since the Congress gave him no power to restore citizenship thus cast off.

The judicial function is the determination of actual controversies between parties (*Federation of Labor v. McAdory*, *supra*), and "claims based merely upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention." *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 324-325. Here, moreover, it is clear that appellees have no reason to fear a future invasion of their claimed rights by the Attorney General. Cf. *Eccles v. Peoples Bank*, 333 U. S. 426, 434-435.

We submit that the Congress approached the limit of its constitutional power in enacting Section 503 of the Nationality Act of 1940, *supra*. (Cf., e. g., *Muskrat v. United States*, 219 U. S. 346; *Federation of Labor v. McAdory*, *supra*.) There it is provided that when a *claimed* right or privilege of citizenship is *denied* on grounds of noncitizenship an action can be brought. The emphasized words demonstrate the existence of controversy. But where, as here, there is no denial, jurisdiction exists

neither under Section 503 nor under the Declaratory Judgment Act. Cf. *New Jersey v. Sargent*, 269 U. S. 328; *Nashville, C. & St. L. Ry. Co. v. Wallace*, 288 U. S. 249; *Coffman v. Breeze Corporation, Inc.*, 323 U. S. 316. We so submit.⁴⁵

What has been said with reference to the absence of a justiciable controversy, of course, applies *a fortiori* to appellant Carmichael, as to whom the record is completely barren of any suggestion of controversy. There are, however, further objections to the action of the court below in invoking, *sua sponte*, the Declaratory Judgment Act in aid of its jurisdiction over the Attorney General.

Admittedly Section 503 of the Nationality Act authorizes a district court to entertain a suit against the head of an executive department, in his official capacity, regardless of his district of official or personal residence, provided that the terms of the statute are met. That Section, like Section 9 (a) of the Trading With the Enemy Act (50 U. S. C., App. § 9 (a)), authorizes suit in the district of plaintiff's residence only if the action is within the consent of the statute. See *Becker Co. v. Cummings*, 296 U. S. 74, 78; *Cummings v. Deutsche Bank*, 300 U. S. 115, 118; Cf. *United States v. Sherwood*, 312 U. S. 584, 586. However absent such consent, a Government officer officially residing in the District of Columbia is beyond the reach of the process of courts outside that District. *Butterworth v. Hill*, 114 U. S. 128; *Hill v. Wallace*, 259 U. S. 44, 49, 72; Cf. *United States v. Tacoma Oriental S. S. Co.* (9 Cir.), 86 F. (2d) 363, 367-369. And, obviously, mere acquisition of jurisdiction over an officer in his official capacity pursuant to such a consent does not confer jurisdiction over him for purposes other than those for which the consent was given. *Duisberg v. Crowley*, 54 F. Supp. 365, 368 (D., N. J.). Accordingly, even if the court below had properly acquired jurisdiction over the Attorney General in his official capacity within the terms of the consent given by Section 503, he was before the court only

⁴⁵ It may be suggested, moreover, that Congress by enacting a special statute—Section 503—carefully defining the circumstances in which a declaration of United States nationality may be obtained, did not contemplate or intend that thereafter resort for this purpose should also be available under the Declaratory Judgment Act. In this connection it should be noted that *Perkins v. Elg, supra*, was decided prior to the enactment of the statute.

for the purposes of that section and the court erred in placing reliance upon the Declaratory Judgment Act as conferring any different or greater judicial authority than that given by Section 503. Especially is this so where, as here, there is no Congressional consent to suit against him as an officer, except as it may be found in Section 503, with the consequence that the judgment would have to go against him as a person in order to avoid the implication of an unauthorized suit against the United States. Cf. *Philadelphia Co. v. Stimson*, 223 U. S. 605, 619-620. That the case involves no controversy with the Attorney General as a person seems clear.

We submit that since the suit does not come within the consent of Section 503, the pendency of a complaint improperly seeking relief thereunder could give the court below no authority to proceed beyond the jurisdictional question, and certainly none to grant relief under a different statute, the jurisdictional requirements of which had not been satisfied in any respect. Accordingly, we submit, the district court clearly erred in invoking the Declaratory Judgment Act in aid of its jurisdiction.

II. The renunciations of the Tule Lake segregants

We discuss herein *seriatim*, in the chronological order of their renunciations, the cases of Shimizu, Sumi, and Murakami. The issue as to whether the renunciation of Inouye is binding is discussed separately in a following section because (1) Inouye is not an appellee in No. 12082, and his case is therefore subject to being dismissed if, as hereinabove suggested, there is a lack of jurisdiction in No. 11839, and (2) because Inouye was not a segregant and the conglomerate of conditions at Tule Lake upon which the other appellees so largely rely in contending for the cancellation of their renunciations is not applicable. Moreover, as we see it, the validity of Inouye's renunciation turns principally if not entirely upon a question of statutory interpretation, i. e., whether the renunciation of one 18 years old is effective under the statute.

The appellees here discussed are not alone in seeking cancellation of their renunciations. In the consolidated cases of *Abo et al. v. Clark et al.*, and *Furuya et al. v. Clark et al.*, 77 F. Supp., 806 (N. D., Cal.), approximately 2,300 plaintiff-

renunciants formerly resident at Tule Lake sought rescission of their renunciations on grounds substantially identical with those here urged. Since issuance of the opinion of Goodman, D. J., in those cases, some 2,156 additional persons have been joined in these actions as parties plaintiff. Thus the vast majority of the 5,371 native-born persons of Japanese ancestry who signed renunciations of their American citizenship in 1945 while resident at Tule Lake are represented in the *Abo* and *Furuya* cases.

The decision of the district court in those cases leaves the matter still in abeyance. There the court ruled that factors inherent in the situation at Tule Lake, "singly or in combination, cast the taint of incompetency upon any act of renunciation made under their influence by American citizens interned without Constitutional sanction, as were the plaintiffs."⁴⁶ 77 F. Supp. 806 at 808.⁴⁷ The court, however, further ruled that the Government might designate such of the plaintiffs as in its opinion "acted freely and voluntarily" in renouncing and that as to such persons further hearings would be held. As to those not thus designated within specified time limits⁴⁸ a decree of cancellation is to be entered. *Ibid.* at 812.

In the instant proceeding upon the record herein, the district court entered judgment for the appellees. It is important to

⁴⁶ There is no issue in this case concerning the constitutionality of the laws or the validity of the regulations pursuant to which the assembly, relocation, and segregation centers were established and operated. The exclusion order was valid and "any forcible measure must necessarily entail some degree of detention or restraint whatever method of removal is selected." *Korematsu v. United States*, 323 U. S. 214, 223. Unlike *Ex parte Endo*, 323 U. S. 283, the present case presents no issue as to the permissible "degree of detention." There is no suggestion that any of the appellees at any time sought or desired leave clearance from any of the centers until, long after their renunciations, they made their applications to depart, which were granted. Indeed, at the time of their renunciations, the *Endo* case had been decided and the leave clearance procedures involved in that case were not in effect.

⁴⁷ In so ruling the court placed reliance on its decision in *United States v. Kuwabara*, 56 F. Supp. 716, notwithstanding the fact that it seems to have been overruled by this Court in *Takeguma v. United States*, 156 F. 2d 437,

⁴⁸ Since extended from the date originally specified because of the joinder of additional plaintiffs.

note, however, that the findings of fact and conclusions of the court below were reached solely upon documentary evidence and without opportunity to hear testimony or to observe the demeanor of witnesses. In such circumstances, where the decision is rendered upon the basis of affidavits, depositions, or the like, it is well established that the courts should give and will give only slight weight to the findings of the district court. *Stork Restaurant v. Sahati*, 166 F. (2d) 348 (C. C. A. 9); *Equitable Life Assur. Soc. of the United States v. Irelan*, 123 F. (2d) 462, 464 (C. C. A. 9); Cf. *Smith v. Royal Ins. Co.*, 125 F. (2d) 222, 224 (C. C. A. 9), cert. den., 316 U. S. 695; *Societe Suisse Pour Valeurs de Metaux v. Cummings*, 99 F. (2d) 387, 391 (App. D. C.), cert. den., 306 U. S. 631.

Turning to a consideration of the renunciations here involved, it is to be observed that the process of renunciation was one of considerable duration. Under the Attorney General's regulations establishing the procedures to be followed under the renunciation statute,⁴⁹ one seeking to execute a "formal written renunciation" as prescribed by the statute had to take three preliminary steps. First, a request in writing had to be sent to the Attorney General in order to obtain the official printed form for an "Application for Permission to Renounce United States Nationality." Second, the prospective renunciant was required to execute and return this form to the Attorney General. A hearing date was then set and prior to executing a formal renunciation the applicant had to appear before a hearing officer who was empowered to recommend approval or disapproval of the renunciation to the Attorney General. These time-consuming procedures, designedly made cumbersome for the precise purpose of minimizing the possibility of coercion or mistake (R. 107), were carried out by each of the appellees under discussion. *Shimizu*, the earliest renunciant of the three, requested that the printed application form be sent her by letter dated December 1, 1944 (R. 193-194); she executed the form on December 28, 1944 (R. 196); and was afforded her hearing on January 16, 1945 (R. 196-197). The

⁴⁹ These regulations appear in 9 Fed. Reg. 12241, and the pertinent parts thereof are set forth in Appendix B, *infra*.

corresponding dates in the case of *Sumi* are—December 29, 1944 (requested printed form, R. 148); January 20, 1945 (executed the form, R. 149–150); and February 1, 1945 (hearing, R. 151–153). Those for *Murakami* are—February 12, 1945 (R. 158); March 1, 1945 (R. 159–160); and March 14, 1945 (R. 161–163).

Thus in two cases slightly over one month, and in the third approximately one and one-half months, elapsed between the times when the appellees first expressed a desire to renounce and the dates upon which the final acts of renunciation were accomplished. There are indications in the record, moreover, that the desires of two of these appellees to renounce extended for even greater lengths of time than appears from the foregoing facts. In her request for the printed "Application for Permission to Renounce" Sumi stated that "I have anxiously waited for this bill [the renunciation statute] to become effective" (R. 148). And even after Shimizu had taken the ultimate step of signing a renunciation of United States nationality on January 16, 1945,⁵⁰ this appellee wrote two letters, one on March 1, 1945, to the Attorney General in which she asked speedy approval of her renunciation (R. 199–200) and the second to her hearing officer, Charles Rothstien, on March 16, 1945, in which she expressed her "firm belief and determination" that she and her family "be repatriated to Japan on the next exchange of nationals" (R. 200). Finally, it is to be noted with respect to all three appellees that their renunciations were not approved by the Attorney General until May 3, 1945 (R. 154, 164, 199). At no time prior to this date did any of the appellees seek to avoid the consequences of their acts, nor did they do so until after the unconditional surrender of Japan was announced by the President on August 14, 1945.⁵¹

⁵⁰ The renunciation form signed by Shimizu contained, as did all others executed pursuant to the renunciation statute, the following statement:

"I hereby renounce my United States Nationality and all its rights and privileges and abjure and renounce all allegiance to the United States of America in accordance with Section 401 (i) of the Nationality Act of 1940 as amended."

⁵¹ This announcement preceded the holding of formal surrender ceremonies in Tokyo Bay on September 2, 1945. See 1946 Britannica Year Book, p. 415.

From the foregoing, it becomes at once obvious that appellees' renunciations were not impulsive acts performed in a temporary state of apprehension or disaffection. Rather, we submit, these circumstances suggest steady perseverance in a preconceived and voluntary course of action. Cf. *Clement v. Buckley Mercantile Co.*, 172 Mich. 243, 137 N. W. 657, 661. Even if it were assumed, contrary to what we believe to be the fact, that appellees' initial steps in seeking renunciation were taken out of a desire to give an appearance of conformity with the majority of Tule Lake citizens, ample opportunity for reconsideration and disclosure was certainly afforded. This is particularly true with respect to the hearings accorded the appellees. Such hearings were conducted by officers specifically instructed not only to explore every possibility of coercion but also "to determine whether there was any group which, although voluntarily renouncing, nevertheless was so clearly pro-American and so clearly acting solely out of bitterness that some change in the regulations or in the statute should be considered" (R. 114). If any sign of coercion was detected the hearing officer was not to permit the signing of a renunciation form (*ibid.*); in cases where the hearing officer believed the applicant to be acting out of resentment he was instructed not to recommend either approval or disapproval but instead to enter such belief in a memorandum of record (R. 113). In these cases the hearing officers took neither of these steps but instead recommended approval of the appellees' renunciations (R. 154, 164, 199; Cf., also, R. 145-146, 146-147, 173).

As previously suggested, moreover, these hearings provided a particularly appropriate opportunity for disaffirming their ostensible desire to renounce if in fact the appellee was not desirous of doing so. At these hearings no person of Japanese descent other than the renunciant was permitted in the hearing room (R. 117). And while the fact that a Tule Lake resident had reached the stage of being summoned for a hearing might have been ascertained by other residents, there is no proof in the record that it was readily discoverable whether or not this hearing had resulted in a report recommending renunciation to the Attorney General or what action, usually occurring after an

interval of many weeks, that official had taken with respect to the individual's renunciation. Instances did occur where individuals who had reached the hearing stage disclaimed, for reasons not known, a desire to renounce thereat (R. 118-119). As before pointed out, however, appellees gave no intimation on the occasion of their hearings, nor did they assert at any time prior to the final Japanese capitulation that their acts of renunciation were other than voluntary. Instead, the appellees made statements at their respective hearings which, we believe, demonstrate that such acts were the result of considered judgment uninfluenced by any factors legally cognizable as coercion and which are wholly unexplained in their affidavits of record. These omissions are the more significant since they had been served with the copies of the transcripts of their hearings set forth in the record in this case prior to the dates upon which they executed such affidavits. We now examine the records of such renunciation hearings and in so doing comment on the affidavits introduced by the appellees purporting to explain the true nature of their acts of renunciation.

Mutsu Shimizu applied for the printed "Application for Permission to Renounce" on December 1, 1944 (R. 193-194); she was accorded a hearing and formally renounced on January 16, 1945 (R. 196-199); her renunciation was approved by the Attorney General on May 3, 1945 (R. 199). Shimizu, having been schooled in Japan between the years 1920-1931 (R. 195), is to be classified as a Kibei, a group notoriously difficult of assimilation (cf. R. 100, 135; Dembitz, op. cit. *supra* note 25, at p. 209). In her affidavit of record (R. 320-321) she asserts, following a recitation with some specificity of a number of conditions allegedly prevailing at Tule Lake during the renunciation period and certain facts pertaining to her own economic and psychological status at that time, that she "would not have renounced but for these conditions and influences which bound her mental processes to the degree that said affiant was not able to realize the gravity of her step in renouncing her citizenship" (R. 321).

Turning, however, to the contemporaneous statements made by Shimizu at the time of her act of renunciation we find that she affirmed to her hearing officer that she had signed the offi-

cial "Application for Permission to Renounce" because of her "own desire [and] without being forced" (R. 197). When asked by the officer why she wished to renounce she replied simply, "I grew up in Japan and I had all of my training there" (ibid.). Shimizu, whose husband, a noncitizen (R. 197), was at that time interned at Santa Fe, New Mexico, was not content, however, to let the matter rest with the execution of her renunciation on January 16, 1945. On March 1, 1945, she wrote the Attorney General a letter (R. 199-200) which can only be construed as a request that he expedite approval of her renunciation, and on March 16, 1945, she wrote a further letter addressed to her hearing officer (R. 200-201) in which she expressed her "firm belief and determination" that she and her family "be repatriated to Japan on the next exchange of nationals." That evidence of acts and statements made subsequent to naturalization is competent to prove the state of mind existing at the time of naturalization is established. *Luria v. United States*, 231 U. S. 9. We assume on general principles and on the basis of this authority that the converse is equally true and that Shimizu's statements in the foregoing letters may be used to demonstrate her state of mind at the time of renunciation. When considered in conjunction with the statements actually made at her hearing, we submit that they lead to the conclusion that Shimizu renounced because she desired to return to Japan.

Tsutako Sumi, also a Kibei (R. 152), applied for an official "Application for Permission to Renounce" by letter received at the Department of Justice on December 29, 1944 (R. 148). She was accorded a hearing and renounced on February 1, 1945 (R. 151-154). Her renunciation was approved on May 3, 1945 (R. 154). As in the case of Shimizu, Sumi's affidavit (R. 317-319) makes copious reference to concurrent conditions at Tule Lake. She concludes, however, in a different fashion:

That as a result of the detention and isolation, and the pressures of pro-Japanese groups upon said affiant's husband to have said husband force said affiant to renounce her citizenship, * * * that said husband finally went against his will with the result in the end of forcing said affiant, against her will, to renounce her

citizenship. Said affiant at no time willingly submitted to the formal act of applying for her renunciation papers (R. 319).

We submit as a matter of law that the statement quoted above, which is the only purported evidence introduced by appellees to explain Sumi's renunciation, would be entirely insufficient even if standing alone to establish the fact of duress or coercion. Even as a matter of pleading a petition or complaint alleging the existence of fraud or coercion must "state distinctly the particular acts of fraud and coercion relied on, specifying by whom and in what manner they were perpetrated, with such definiteness and reasonable certainty that the court might see that, if proved, they would warrant the setting aside of" the act allegedly coerced. *Chamberlain Machine Works v. United States*, 270 U. S. 347, 349. *A fortiori* this rule is applicable to the specificity of the evidence adduced. Where, as here, evidence is entirely lacking as to the nature or quality of the allegedly coercive acts performed by Sumi's husband, there is a basic insufficiency warranting dismissal. Cf., also *Bogert v. Southern Pacific Co.*, 285 Fed. 46 (E. D., N. Y.) to the effect that an affidavit containing conclusions of law and fact can be used as evidence only in so far as it sets forth definite statements of fact, and *Cornwell v. Southern Maryland Trust Co.*, 289 Fed. 939, 941-942, and cases there cited, to the effect that doubtful or ambiguous statements contained in an affidavit will be construed against the affiant on the assumption that the affiant did not dare to use stronger ones.

The entire record of Sumi's renunciation hearing is, we think, illuminating. In addition to stating that she wished to renounce because "I am going back [to Japan] with my husband" (R. 152), she twice reiterated that she favored renunciation because she had to return to Japan for the reason that her aged father was a resident of that country (R. 152, 153). When informed by the hearing officer that: "You can still go back [to Japan] without giving up your citizenship," she replied merely that: "I don't care, I want to go back anyway." (R. 153.) Surely this latter statement is not one arising from an

apprehension of the disastrous consequences which might attend a failure to achieve renunciation, but is one of indifference. We submit that an analysis of these statements, wholly unexplained in her affidavit leads to the conclusion that Sumi renounced because she deemed it advantageous to do so in view of her intended return to Japan.⁵²

Miye Mae Murakami, a permanent resident of this country, requested an official application form by letter dated February 12, 1945 (R. 158). She was afforded a hearing and renounced on March 14, 1945 (R. 161-164). Her renunciation was approved May 3, 1945 (R. 164).

Murakami's affidavit of record (R. 314-316) may best be evaluated, we submit, in the light of the statements made by her at her renunciation hearing. The following excerpts are taken from that hearing:

Q. (By hearing officer.) Why do you want to renounce your citizenship?

A. Because I want to go back to Japan, and I won't need it when I am there.

* * * * *

Q. Your husband is issei?

A. Yes.

Q. Has he petitioned for repatriation?

A. Yes.

* * * * *

Q. Why don't you stay [here]?

A. My husband is going back. He has a mother there. I go where he goes.

Q. Is that the only reason?

A. Yes.

⁵² As previously noted, Sumi, in her original letter requesting an application form, stated that "I have anxiously waited for this [renunciation] bill to become effective" (R. 148). That this evidence of her state of mind preceding the renunciation period is relevant and competent would seem plainly to follow upon the analogies presented by *United States v. Holtz*, 54 F. Supp. 63, 71 (N. D., Cal.), and *Schurmann v. United States*, 264 Fed. 917, 920 (C. C. A. 9).

Q. You can go to Japan without renouncing your citizenship.

A. That way it is better.

Q. It isn't. There is absolutely no connection between the two.

A. We don't want it when we go there.

Q. Suppose you want to come back?

A. We will just have to stay there, I guess.

* * * *

Q. Are you loyal to Japan?

A. I think so.

Q. You understand if you give up your citizenship you can't get it back, and if you do that and go to Japan, you can't come back here?

A. Yes (R. 161-163).

We submit that a reading of this evidence relating to Murakami's act of renunciation can lead to but one conclusion—that she renounced because of her desire to return to Japan with her husband and because of her belief that once there her American citizenship would prove a handicap rather than an asset. In stating the latter belief she exhibited no regret at the loss of citizenship—it would merely be an unwanted impediment in Japan—nor did she demonstrate any sense of panic or hysteria such as she now asserts caused her, in part, to renounce.

Murakami's present explanation of that act is by no means clear. Near the outset of her affidavit she alleges that "said affiant renounced her citizenship due to an erroneous and insidious report prevailing throughout the Center that unless an American citizen Japanese renounced his or her citizenship, that said citizen would not be able to join his or her family or spouse when said Japanese subjects were to be repatriated to Japan" (R. 315).

It is to be observed that the foregoing allegation is in legal contemplation one of mistake and not coercion. The former, it would appear clear, presupposes a free exercise of judgment (although based on erroneous premises); the latter, pressure

depriving one of such freedom. Thus, were the allegation that Murakami renounced due to an "erroneous and insidious report prevailing throughout the Center" inherently creditable, an issue might arise as to whether or not Murakami's renunciation should have been set aside on grounds of mistake. This, however, was not the course taken by the courts below—their findings and conclusions (Cf. R. 368, M. R. —) were to the effect that Murakami's renunciation was the result of "mental fear, intimidation, and coercion." Furthermore, the record totally fails to establish by the requisite "plain and convincing evidence beyond reasonable controversy" that Murakami's renunciation was made under a misapprehension. *Union Central Life Insurance Company v. Deutser*, 13 F. Supp. 313, 319 (D. Md.) aff'd 81 F. 2d 139 (C. C. A. 4). In fact the strongest evidence in the record that Murakami's alleged belief that she had to renounce in order to accompany her husband on his return to Japan *actually was erroneous* is her hearing officer's statements to her that: "You can go to Japan without renouncing your citizenship," and that: "There is absolutely no connection between" renunciation and a return to Japan (R. 162, see *supra*, p. 47). These statements, it is submitted, should certainly have been sufficient to elicit inquiries from Murakami had she in fact been under the belief that renunciation was a prerequisite to a return to Japan. Furthermore, Murakami's contemporaneous statement as to the reason for desiring renunciation does not inspire confidence in her present claim of mistake. When asked directly by her hearing officer why she wished to renounce she answered not that she wished to return to Japan and therefore desired to renounce, but instead answered: "Because I want to go back to Japan, and I won't need it when I am there" (R. 161).

Turning again to Murakami's affidavit, we find that she further states, following a recitation of Center conditions, that "said affiant realizes that it was such an irrational state of mind, accompanied by several years detention and isolation and insecurity, threats and fears which finally resulted in pressure of the pro-Japanese groups depriving said affiant of her own free

will, and being bound by said pressures to renounce her citizenship, contrary to her best judgment" (R. 316).⁵³

These statements, however, if taken, as they were obviously taken by the courts below, as purporting to establish duress or coercion as a ground for rescinding the renunciation, are antithetical to the plea of mistake above-noted. In view of this conflict, we submit that the courts below erred in setting aside Murakami's renunciation on grounds of coercion and duress. As stated in *Prudential Insurance Co. v. Fidelity Union Trust Co.*, 128 N. J. Eq. 327, 15 A. 2d 888, 890:

It is firmly established that mere annoyance and vexation will not constitute duress, and to avoid a contract on such ground it is not sufficient to merely show exertion of pressure by threats, but it must *clearly* appear that the threats employed actually subjugated the mind and will of the person against whom they were directed and were thus the *sole and efficient cause of the action which he took*. [Italics supplied.]

We submit that the record of Murakami's renunciation hearing, as to which she is wholly silent in her affidavit, leads directly to the conclusion that she renounced because she deemed it advantageous to do so in view of her intended return to Japan.

* * * *

As Mr. Justice Cardozo stated for the Court in *Steward Machine Co. v. Davis*, 301 U. S. 548 at 589-590: "* * * to hold that motive or temptation is equivalent to coercion is to plunge the law in endless difficulties. The outcome of such a

⁵³ Murakami's reference (R. 315) to the fears engendered for her life "several times" when "rough looking, tough talking men would invade" the women's washroom "and threaten to assault any woman who had not yet renounced their citizenship," does not make it clear whether or not she personally witnessed such invasions, or merely heard that such incidents had occurred. Nor does she say when they occurred with reference to the period between February 12, 1948, when she requested an application form (R. 158) and March 14, 1945, when she actually renounced (R. 163-164). As previously indicated (p. 25, *supra*), the mass removals of organization members from the Tule Lake Center had occurred prior to the later date. (Cf. R. 5-6). Moreover, it is evident from her subsequent statements (R. 165-167), that such occurrences did not seem to her to be of sufficient importance to warrant mention prior to this litigation.

doctrine is the acceptance of a philosophical determinism by which choice becomes impossible. Till now the law has been guided by a robust common sense which assumes the freedom of the will as a working hypothesis in the solution of its problems." Cf. *Gregg Cartage Co. v. United States*, 316 U. S. 74, 79-80.⁵⁴ It is axiomatic that one seeking to overcome this working hypothesis by a plea of duress bears the burden of proof. *Mason v. United States*, 17 Wall. 67, 74; *Savage v. United States*, 92 U. S. 382, 387-388; *Hartsville Mill v. United States*, 271 U. S. 43. Whether in the ordinary case this burden can be satisfied only by the presentation of "clear and convincing" evidence (Cf. *Bertschinger v. Campbell*, 99 Wash. 142, 168 P. 977)⁵⁵ as in the kindred pleas of fraud and undue influence (9 Wigmore, *Evidence* (3rd ed.), Sec. 2498, p. 329), or whether a mere "preponderance" is required need not, we believe, be here determined. Here, many months intervened between the appellees' acts of renunciation and the making of their first assertions that such acts were involuntary. In the meantime Japan had capitulated. "Where there has been a delay on the part of the party pleading duress, clear and conclusive evidence will be required to explain the failure to proceed." *Eberstein v. Willetts*, 134 Ill. 101, 24 N. E. 967, 969, and cases there cited. Cf. *Sternback v. Friedman*, 23 Misc. Rep. 173, 50 N. Y., Supp. 1025. *Black, Rescission and Cancellation* (1916), vol. 1, Sec. 223, p. 589. The appellees, however, have failed, we submit, to approximate even the lesser quantum of proof referred to above.

We submit upon a review of the foregoing evidence, which is the only evidence contained in the record directly relating to

⁵⁴ "How far one by an exercise of free will may determine his general destiny or his course in a particular matter and how far he is the toy of circumstances has been debated through the ages by theologians, philosophers, and scientists. Whatever doubts they have entertained as to the matter, the practical business of government and administration of the law is obliged to proceed on more or less rough and ready judgment based on the assumption that mature and rational persons are in control of their own conduct."

⁵⁵ See also *Wilkerson v. Bishop*, 47 Tenn. 24, 29-30; *Philadelphia Fixture and Equipment Corp. v. Carroll*, 126 Pa. Sup. 454, 191 Atl. 216; *Chatfield v. Seattle*, 198 Wash. 179, 88 P. 2d 582; *Black, Rescission and Cancellation* (1916), vol. 2, § 667, p. 1537.

these three appellees, that it is at very least equally as inferable that they renounced for the reason stated by them at their renunciation hearings, as that they were compelled to do so against their true desires. Accordingly, the courts below erred in setting aside and cancelling such renunciations. Even if it can be said that two inconsistent inferences as to the reasons why each renounced may be drawn on the one hand from a reading of the transcripts of their renunciation hearings and on the other from a reading of the appellees' affidavits despite their inherent weaknesses, the result must be the same. *Penn Ry. Co. v. Chamberlain*, 288 U. S. 333, 339 and cases there cited; *New York Life Ins. Co. v. King*, 93 F. (2d) 347, 353 (C. C. A. 8), and cases cited; *Liggett & Myers Tobacco Co. v. DeParcq*, 66 F. (2d) 678, 684 (C. C. A. 8).

As stated in the case last cited: ". . . where proven facts give equal support to each of two inconsistent inferences, judgment must go against the party upon whom rests the burden of sustaining one of the inferences as against the other" 66 F. (2d) 678 at 684. Application of this doctrine in and of itself should, as above suggested, be dispositive. If more be needed, however, we submit that the appellees have failed to achieve even an equivalence of inferences. As against the purported reasons advanced in their affidavits, of necessity open to severe scrutiny because self-serving (Cf. *Dixie Ohio Express Co. v. Lowery*, 115 F. (2d) 56 (C. C. A. 5); *Drennin v. Heard*, 211 Fed. 335 (C. C. A. 5)) there stand unexplained not only the records of their contemporaneous statements made at the renunciation hearings but also (1) the persistence exhibited by Shimizu after the fact of her renunciation—a persistence which can hardly be explained (nor is there any attempt to explain it) on the ground of coercive pressure since the act of renunciation itself would have been sufficient evidence of her sympathies; (2) the absence in Sumi's affidavit of any description of the nature or quality of the allegedly coercive actions of her husband in forcing her renunciation—an insufficiency of itself warranting dismissal (*supra*, p. 45), and which is to be contrasted with the clarity of the reasons for renouncing advanced by her at her hearing; and (3) the inconsistencies contained in Murakami's own affidavit in which she avers in the same document first that her decision to

renounce was a voluntary one although based on an alleged erroneous impression and second that she was deprived through coercion of the right to exercise her judgment in the matter.

As above stated the only materials introduced by the appellees into the record which purport to deal in any way with the actual states of mind of the appellees themselves at the time of renunciation are their own affidavits. Otherwise such materials, as exemplified by the brief affidavit of Dr. Kunkel (R. 311-313), attempt only to establish the hypothesis that during the renunciation period "the residents in general did not possess mental freedom but on the contrary were subject to circumstances that were inherently coercive in nature" (R. 312).⁵⁶ Even if accepted as proved this hypothesis, taken

⁵⁶ It is the Government's position that the opinions expressed in the affidavits and exhibits of record should be excluded from consideration as evidence, under the terms of the stipulation of submission on the merits (R. 323), upon the ground that they do not state "factual matter." In any event, in so far as they may suggest inferences from acceptable evidence, they merely recite conceivable factors that might or might not have entered into appellees' decisions to renounce.

The appellees (R. 152, 161, 197), like the majority of adult transferees at Tule Lake (see notes 22-25, p. 15, *supra*; cf. R. 95-96, 140, 258, 261, 264, 309-310, 325) had decided, for whatever reason, to make their future homes in the Orient. It is said that many others were "fence sitters" who wished to conduct themselves in such a manner as to leave open the possibility of expatriation during or after the war (see, e. g., R. 37, 266; cf. T & N, 342.) It has been suggested that there was considerable vacillation between the groups (R. 37) depending largely upon the course of the war (R. 264; cf. T & N, 88.) According to the above-mentioned opinions, the underlying factors and influences that led to many decisions to renounce were as follows:

1. Loyalty to Japan. (R. 135, 221, 251, 261; T & N, 340-341. Cf. 46-47, 53, 54, 57, 66, 81, 265; T & N, 100-102.)

2. Belief that Japan would win the war and that a pro-Japanese record would be advantageous. (R. 141, 264; T & N, 325-326. Cf. R. 36, 95-96, 221; T & N, 98-100.)

3. Assumption that renunciants, who later changed their minds, could escape consequences. (T & N, 326; R. 90; cf. R. 129.)

4. Desire to avoid service in United States armed forces. (R. 70, 84, 90, 115, 138, 233; T & N, 326, 339, 359. Cf. R. 36, 56, 80, 82, 326; T & N, 317.)

5. Anger and frustration because of prewar prejudice and discrimination against their race, climaxed by hardships and losses incident to the evacuation program. (R. 88, 223-224; T & N, 349. Cf. R. 36, 292; T & N, 95.)

6. Fear of public hostility and dread of economic hardships incident to relocating outside of centers at some future date. (R. 70, 74, 75, 77, 89-90,

alone, would not suffice to exculpate the appellees. *Hartsville Mill v. United States*, 271 U. S. 43, 48. Certainly an ardent *Hokoku Seinen-dan* member could hardly contend that his renunciation should be rescinded merely because he was a resident at Tule Lake during the renunciation period. Equally, we believe, is this true of renunciants who were segregated at Tule Lake because they had made previous applications for repatriation. An expressed desire to return to Japan during a time of total war between that nation and this may well be regarded as tantamount to an expression of willingness to serve in that nation's war effort. These are but examples to demonstrate what the court below itself acknowledged—that irrespective of the alleged existence of “inherently coercive” conditions, “the plaintiffs’ [appellees’] rights are to be considered and determined separately and according to the facts pertaining to them” (R. 331-332). Cf. *Hartsville Mill v. United States*, *supra*.

115, 136-137, 140, 226, 296, 298; T & N, 345-350. Cf. R. 36, 37, 233. But, see R. 234.)

7. Desire to remain with members of families who had been or might be interned as dangerous alien enemies and possibly removed or repatriated to Japan. (R. 70, 90, 115, 138-139; T & N, 326, 350-351. Cf. R. 152, 162, 180.)

8. Desire to keep on friendly terms with pro-Japanese acquaintances, neighbors and associates. (R. 81, T & N, 351-352; cf. R. 307-308.)

As indicated, *infra*, pp. 55-57, there is no acceptable evidence that resort was had to violence or threats of violence to induce renunciations. There are, however, sharply conflicting opinions among the affiants as to whether or not fears of physical violence played any substantial part in the decisions to renounce. The opinions range from the belief that such fears were negligible (R. 91, 121, 126-127, 142) to the assumption that earlier acts of violence had controlling influence in many cases (R. 228, 268-269). Also, a number of the affiants speak of the heavy increase of applications for renunciation after December 17, 1944, as “mass hysteria” (e. g., R. 308), “a state bordering on panic” (R. 79), etc. In most of such instances it is impossible to tell whether an affiant has reference to a kind of fanaticism (cf. R. 284), contagious excitement (cf. T & N, 342) or merely the persuasive, scale-tipping, influence of majority opinion (cf. R. 308). In any event, all affidavits make it plain that possible fears of violence and group influence constituted only two factors, among many, which may have led to individual decisions to renounce. Even if taken at face value, they establish no more than a partial catalog of possible motives and reasons for such decisions in particular cases, and fall far short of proving coercion in any case.

Even were the rule otherwise, however, the appellees' suggested premise that the large number of Tule Lake renunciations can only be explained on the basis of surrounding circumstances should be viewed with considerable skepticism. At the outset there is the fact that 30 percent of Tule Lake citizens eligible to renounce, surely not too differently circumstanced, did not do so. Secondly, although the percentage of renunciants at Tule Lake vastly exceeded those at the other relocation centers, it is not to be forgotten that Tule Lake residents in the main were segregees who had displayed previous attitudinal differences from the majority of the West Coast evacuees. The very great majority of all persons who had been designated for segregation at Tule Lake following registration received such designation as a result of either a negative answer to Question 28 (see pp. 12, 14-15, *supra*) or a prior request for repatriation (R. 94). We make no claim that one so acting was *ipso facto* loyal to Japan, although, as previously remarked, an applicant for repatriation must necessarily have contemplated the possibility of being drafted, if not actually volunteering, for service in Japan's war effort.⁵⁷ Nevertheless, it should occasion little surprise that this group later displayed a far greater predilection—greater in fact than even the authorities had anticipated—toward renunciation than did nonsegregates.⁵⁸ The point may be further elaborated. It will be recalled (see p. 26, *supra*) that 78 percent of the transferees renounced whereas only 49 percent of the Old Tuleans so acted. It is true that the composition of neither of these two groups was entirely uniform. But whereas the transferee group was merely sprinkled with adult individuals who moved to Tule Lake in order to accompany members of their families, a very substantial proportion of Old Tuleans were not true segregants, but had preferred to remain at Tule Lake rather than to move to another center (T&N, 104). In these circumstances it is to

⁵⁷ There may be no doubt that those applying for repatriation or expatriation, particularly in the early days of the war before segregation occurred, hoped for an early return to Japan irrespective of whether the war was still in progress. (See R. 96.)

⁵⁸ It will be further remembered (see p. 16, *supra*) that about one-half of the adult Tule Lake population were Kibei who had lived and had been educated in Japan during some period of their lives (T&N, 370).

be noted that in every instance, up to and including renunciation, where data is available to analyze a division of attitudes following segregation, the transferees were much more preponderantly antiadministration, anti-American and pro-Japanese than were the Old Tuleans. This was true with respect to the early "status quo" issue, it continued markedly to be true with respect to membership in the resegregationist organizations, and it remained true with respect to renunciation. From a bare review of these facts alone, we submit, it is as equally inferable that the mass of Tule Lake renunciants were predisposed towards renunciation and voluntarily renounced as that they were the victims of coercion.

It should be further remarked that by and large the record is barren of any indication that violence or threats of violence occurred during the renunciation period itself. There are repeated references to the murder of Hitomi on July 2, 1944. Plainly, however, that incident happened long prior to the time any issue of renunciation or nonrenunciation could have arisen. Hitomi's murder and the almost concomitant *inu* beatings (see *supra*, p. 20) occurred not because the victims were refusing to renounce but because as alleged informers they represented a threat to persons actively or verbally opposing policies of the Center's administration.⁵⁹ That similar acts of

⁵⁹ As previously noted (*supra*, p. 20) there has been considerable speculation as to the actual motivation for the murder of Hitomi. Moreover, while much has been made of this murder, it would not appear extraordinary that one homicide and a number of physical assaults should occur in any community of 18,000 population over the course of a year.

It is nowhere suggested in the record that popular dislike for, and sanctioning of violence against supposed informers was peculiar to the segregation center at Tule Lake. As previously noted, the brand *inu* dates back to a period long before the war and was linked with the code of the Japanese immigrants which forbade divulging detrimental information outside the racial group. (T&N, 21.) It seems evident that this code had a bearing on the Government's inability to seek out the disloyal prior to excavation (see, *id.*, 20-21; cf. *Korematsu v. United States*, 323 U. S. 214, 218-219), as it did upon WRA's difficulties in apprehending and obtaining convictions of wrongdoers in the centers (see, e. g., R. 49). In November and December 1942, according to a WRA report, the arrest of evacuees suspected of beating supposed informers at the Poston and Manzanar Centers were followed by mass demonstrations for their release. (WRA Quarterly Report, Oct. 1 to Dec. 31, 1942, pp. 31-40.) At Manzanar several hundred men "went to the hospital to demand the surrender of the beaten man, but he

violence were not generally indulged in where the issue was merely an individual's choice not to renounce may readily be inferred from the facts that many persons openly resigned from the resegregationist organizations and that about 1,500 citizen evacuees at Tule Lake chose not to renounce. Yet no instances of violence either against the resigners or the nonrenunciants are on record. Cf. R. 121, 127.⁶⁰ And with respect to the Hitomi murder and the *inu* beatings above discussed, none of which directly related to an issue of renunciation, it may certainly be said that such events, having occurred long prior to the renunciation period, cannot be regarded as having had a coercive effect on the renunciants. Cf. *Central Acceptance Corp. v. Nash Bluefield Motor Co.*, 104 W. Va. 174, 139 S. E. 654; *Worcester v. Eaton*, 13 Mass. 371; *Ellison v. Pingree*, 69 Utah 468, 231 Pac. 827, 831.⁶¹ Finally it is to be noted that a major proportion of the membership of the resegregationist organiza-

had hidden himself so effectively that the searchers left, convinced that he had been removed earlier" (id. pp. 36-37). The crowd demanding release of the prisoner refused to disband even after tear gas had been thrown, and, as a result of an attempt to run an automobile into the machine gun positions, the military police opened fire, killing two evacuees and wounding nine others (id. p. 37). (See and cf. T&N, 45-52; but cf. R. 297.)

⁶⁰ No contrary inference may be drawn from the fact that on January 18, 1945, Mr. John Burling, a Department of Justice official, addressed an open letter to the chairman of the Hoshi-dan and Hokoku Seimen-dan stating in part: "I am well aware that your two organizations have put pressure on residents of this center to exert loyalty to Japan, and that in a number of cases physical violence was employed. * * * It is as treasonable to coerce others into asserting loyalty to Japan here as it would be outside. All these activities will stop." (R. 216). This letter is to be viewed in conjunction with the reiterated statements contained in Mr. Burling's affidavit of record (R. 92-144) that no incidents of violence during the renunciation period were reported to him, with the fact that he was extremely concerned over the large number of Tule Lake residents that were seeking renunciation (R. 124), and with the further fact that he and the Department of Justice were exploring every feasible method of eliminating the presence of any possible coercive factors (cf. R. 107, 109-110, 113-114, 117, 121-122, 128).

⁶¹ Statements in two of the affidavits filed on behalf of the appellees (R. 228-230, 289) seem to refer to a knifing of a young segregee, as having had some relationship to the renunciation program. This incident is described in excerpts from a letter (T&N, 353-354) and is said to have occurred in October 1944. Although the letter was purportedly written by a repentant renunciant, it does not even suggest that the knifing was committed for the purpose of coercing renunciation. See, also, T&N, 319.

tions, the obvious potential source of violence, was removed from the scene early in the renunciation period. Officers incumbent at the outset of this period were afforded first opportunity of renouncing and were thereupon removed to an internment camp in New Mexico on December 27, 1944 (R. 119). A second group of officers who had promptly been elected to fill the vacancies thus created was removed on January 26, 1945 (R. 121); 650 members were thereafter removed on February 11, 1945, and an additional 125 departed on March 4, 1945 (R. 122). These steps having been accomplished, it would seem extremely doubtful that the remaining Tule Lake residents could have further been in any great fear of violence, yet those who had not yet been afforded hearings persisted in renouncing (R. 129) and those who had done so took no steps to stay the Attorney General's ultimate approval or to request cancellation until long afterwards.⁶²

One further point, applicable specifically to the appellees and generally to many other Tule Lake residents, may be briefly discussed. Were it to be assumed, the foregoing indications to the contrary notwithstanding, that a particular resident during the renunciation period deemed it intolerable to remain at Tule Lake without renouncing, an avenue of escape was still available. WRA regulations governing Tule Lake, while not permitting a grant of seasonal or indefinite leave to a resident for the purpose of performing work outside the relocation projects, did permit the filing of a leave clearance application which, if granted,⁶³ permitted the applicant to move to another relocation project.⁶⁴ See WRA Regulation 110.9, *infra*, Appendix C.

⁶² A relatively small number of applicants to withdraw or cancel were received by the Department of Justice in June 1948 (R. 129); not until considerably after the Japanese surrender did the great rush away from renunciation commence (R. 130).

⁶³ This privilege was denied as a matter of regulation only to those to whom leave clearances had already been denied. WRA Regulation 110.9, *infra*, Appendix C.

⁶⁴ That there were demands by some residents for leave clearance would seem to be established by the fact that the affiant Noyes, following his arrival at Tule Lake on October 6, 1944, was appointed to act "as chairman of the Leave Clearance Board in the conduct of leave clearance hearing for evacuee residents of the Tule Lake Segregation Center who applied for transfer to a relocation center" (R. 214).

Moreover, following the announcement of the lifting of the general exclusion orders on December 17, 1944 (see p. 24, *supra*) it was clear that on and after January 20, 1945, there would be no restriction on the departure of anyone not covered by an individual exclusion order (T&N, 334). That a decision to seek these avenues of escape rather than to renounce might involve hardships may be conceded, but it may likewise be said that any decision involving as one alternative an act of expatriation presumably occurs in a state of crisis and requires a balancing of loyalty against convenience. If, as has been frequently suggested, "the high privilege of citizenship must inspire obligations of allegiance" (*Petition of Peterson*, 33 F. Supp. 615, 616. Cf. *Luria v. United States*, 231 U. S. 9; *In re McIntosh*, 12 F. Supp. 177, 178), it appears not unreasonable to suggest that if a convinced loyal in fact felt that he or she could not comfortably remain in Tule Lake without renouncing, he or she would have explored the possibility of obtaining leave clearance. Cf. the dissenting opinion of Circuit Judge O'Connell in *Doreau v. Marshall*, — F. (2d) — (C. C. A. 3, decided August 23, 1948.)⁶⁵

We submit that this record, upon review, leads directly to the conclusion that the appellees had a choice whether or not to renounce, and that they made that choice of their own accord. The suggestion arises from such a review that the appellees were influenced in making their decisions by the fact that their respective husbands were returning to Japan. But a decision to accompany their husbands did not of itself compel them to take the further step of renouncing, as both Sumi and Murakami were specifically informed at their hearings (R. 153, 162). This is not to say that renunciation was not deemed expedient by those desiring to return to Japan. Compare the statement of Murakami that "it is better" to take the prelim-

⁶⁵ The language employed by the majority in the above cited case should also be noted: " * * * the forsaking of American Citizenship, even in a difficult situation, as a matter of expediency, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress." Somewhat analogous is the so-called "retreat rule" of the criminal law relating to homicides sought to be justified on grounds of self defense. For discussion thereof see, e. g., *Brown v. United States*, 256 U.S. 335; Beale, *Homicide in Self Defense* (1903), 3 Col. L. Rev. 526, 531-539.

inary step of renunciation prior to going to Japan (R. 162). In fact the record indicates generally that those segregants who shared in the widespread belief that Japan would ultimately be victorious (T&N, 98-100, R. 141, 264) foresaw substantial advantages in making an early demonstration of partisanship through renunciation whether or not they envisaged a speedy return to Japan (T&N, 326, R. 221).

Whether in fact the appellees themselves shared in this belief either inherently or through legitimate persuasion, whether in fact there is cogent explanation for the statements made at their renunciation hearings, as to which the appellees are wholly silent in this record, whether in fact the seeming omissions or inconsistencies in their affidavits can similarly be explained—these and cognate questions cannot be determined on the record as it now stands. In the light of the imperfections of the present record—imperfections which it would seem could only be remedied by the introduction of further evidence by way of direct testimony and cross-examination—and in view of the importance of the issue involved, the appellants herein would have no objection were this court to reverse and remand to the court below with appropriate instructions along the lines suggested. Cf. *Kennedy v. Silas Mason Co.*, 334 U. S. 249; *Eccles v. Peoples Bank*, 333 U. S. 426, 434; and compare Mr. Justice Frankfurter's dissent in *Johnson v. United States*, 333 U. S. 46 at pp. 50-56. We submit, however, that whether the matter be remanded or not, the decision of the courts below with respect to the renunciations of Shimizu, Sumi, and Murakami should be reversed.

III. The renunciation of Inouye

Inouye was born on May 30, 1927, and was 17 years of age when, on February 21, 1945, he first signified an intention to renounce (R. 175). On March 7, 1945, Inouye submitted an official application for permission to renounce United States nationality (R. 176-178). On July 9, 1945, when he was 18 years of age, Inouye, following a hearing at the Manzanar Relocation Center (R. 178-180), executed his formal renunciation of United States nationality (R. 181-182). The renunciation

was approved by the Attorney General on August 7, 1945 (R. 182).

The court below in No. 11839 set aside this renunciation on two grounds. It held that Inouye's renunciation was incompetent and void for the reason that Inouye was a minor at the time it was executed (R. 335, 367). It also entered the following finding of fact:

Albert Yuichi Inouye applied for renunciation of his citizenship when he was seventeen (17) years of age and his renunciation was approved by the Attorney General when he was eighteen (18) years of age, under a combination of circumstances which amounted to undue influence and parental coercion. (R. 365-366.)

The concluding clause of this finding appears to have been taken from a letter (R. 182-185) written by Inouye to the Attorney General on August 23, 1945, following announcement of the Japanese surrender, in which Inouye attempted to disavow his renunciation of July 9, 1945. Therein Inouye alleged that his renunciation was executed "under a combination of circumstances which amounted to undue influence and mistake" (R. 183).⁶⁶ Save for the substitution of the words "parental coercion" for "mistake," the finding of the court below is in identical language. Inouye's letter, from which the district court thus appears to have derived its finding, is not, however, even verified. Plainly, it is evidence only of the fact that Inouye attempted to withdraw his prior renunciation and cannot be accepted in lieu of testimony that his renunciation was involuntary. There is not in this record even an affidavit, such as those submitted by the other appellees on their own behalf, purporting to explain the true nature of Inouye's act. We submit that the finding of the court below in No. 11839⁶⁷ that

⁶⁶ Inouye, as above stated, executed his renunciation at the Mazanar Relocation Center (R. 182). As far as is shown by the record Inouye was never located at Tule Lake.

⁶⁷ As before stated, Inouye is not a party to the proceedings in No. 12082.

Inouye's renunciation was not a voluntary act is supported neither by a preponderance of, nor by any, evidence.⁶⁸

There remains the issue of whether or not the renunciation of one 18 years of age is binding under the provisions of Section 401 (i) of the Nationality Act of 1940, as amended.

Prior to the enactment of that statute there was some conflict of opinion as to whether a person under the age of 21 could expatriate himself by any act of his own. The district court in *Baglivo v. Day*, 28 F. (2d) 44 (S. D. N. Y.) held not. To the same effect were dicta in *Ex parte Gilroy*, 257 Fed. 110, 119 (S. D. N. Y.), *McCampbell v. McCampbell*, 13 F. Supp. 847, 849 (W. D., Ky.), and *Ex parte Chin King*, 35 Fed. 354, 356 (D. Ore.).⁶⁹ *In re Wittus*, 47 F. (2d) 652 (E. D. Mich.), however, constituted a square holding that a woman under 21 years of age lost her citizenship through marriage to an alien under the repatriation statute then in effect. Cf. also *In re Carver*, 142 Fed. 623, 624 (C. C. Maine).

It was equally unsettled until the Supreme Court decision in 1939 in *Perkins v. Elg*, 307 U. S. 325, whether a minor born in the United States and hence a citizen thereof lost that citizenship if he was thereafter taken by his parents to a foreign country wherein his parents obtained citizenship through naturalization. Both an administrative ruling (36 Op. Atty. Gen. 535) and a court decision (*United States v. Reid*, 73 F. (2d) 153 (C. C. A. 9) had indicated prior to *Perkins v. Elg* that such

⁶⁸ The findings of "undue influence" and "parental coercion," if meant as separate reasons for setting aside Inouye's renunciation, are equally unsupported. The suggestion of "parental coercion" would seem to have been derived from a statement made by Inouye in connection with an application for his release from internment as an alien enemy that he renounced because his parents had instructed him to do so (R. 192), and from a remark recorded by an officer delegated to afford him a hearing upon his "Application for Non-Repatriation" (R. 186-188) that his was a "clear case of parental influence" (R. 192). The latter statement was entered as a "remark or observation" in a proceeding unconnected with the renunciation procedure and cannot, of course, be considered as an admission, or, for that matter, as the equivalent of an opinion that Inouye was coerced into renouncing. An act done in gratitude or out of affection is not one done under duress. *Mackall v. Mackall*, 135 U. S. 167, 172; cf. *Towson v. Moore*, 173 U. S. 17.

⁶⁹ See also *Ludlam v. Ludlam*, 26 N. Y. 356, 376; *State ex rel Phelps v. Jackson*, 79 Vt. 504, 514.

a derivative naturalization was binding and exclusive. In *Perkins v. Elg*, however, those holdings were overruled, and in the course of that decision the Supreme Court utilized language which may be viewed as supporting the position taken by the district court in *Baglivo v. Day*, *supra*. It said (307 U. S. 325 at 324):

To cause a loss of (United States) citizenship in the absence of treaty or statute having that effect, there must be voluntary action and such action cannot be attributed to an infant whose removal to another country is beyond his control and who during minority is incapable of a binding choice.

During the year following this decision Congress enacted the present Nationality Act (54 Stat. 1137).⁷⁰ Section 401 thereof provided that: "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by" the performance of any of eight different acts which were set forth in separately lettered subdivisions (a-h, inclusive) thereto. Subsequently two further subdivisions, (i) and (j), were added by amendment. These provisions are collected in 8 U. S. C. 801 (Appendix A, *infra*) and, for convenience, are referred to hereinafter under their Code designations.

Section 403 (b) of the Nationality Act of 1940 (8 U. S. C. 803 (b)) provides as follows:

No national under eighteen years of age can expatriate himself under subsections (b) to (g), inclusive, of section 401.

Briefly described subsection (b) relates to the taking of a foreign oath of allegiance; subsection (c) to the performance of

⁷⁰ The groundwork for this legislation was laid by an interagency committee appointed by the President by Executive Order No. 6115 of April 25, 1933. Pursuant thereto the committee, composed of the Secretaries of State and Labor, and the Attorney General, submitted a proposed codification of the nationality laws of the United States which was transmitted to Congress by the President on June 12, 1938. This proposed code, as subsequently modified and amended by Congress, became the Nationality Act of 1940. See *Codification of the Nationality Laws*, House Committee Print, 76th Cong., 1st Sess.

foreign military service; (d) to the holding of certain positions in the civil service of a foreign state; (e) to voting in a foreign election or plebiscite; (f) to making a formal renunciation of United States nationality while abroad; and (g) to deserting the military or naval service of the United States in time of war. Congress thus provided that the performance of any one of these six out of the eight original acts of expatriation set forth in the Nationality Act of 1940 would cause a loss of nationality provided the performer was not under 18 years of age at the time. No provision concerning age, however, was made by the enacting Congress with respect to obtaining naturalization in a foreign state upon the individual's own initiative (8 U. S. C. 801 (a)) or with respect to a conviction of treason (8 U. S. C. 801 (h)). There is a similar silence with respect to the subsequently enacted subsections (i) and (j).

Although the opinion of the court below in No. 11839 is somewhat confused in respect to the discussion of Sections 801 and 803 (b) (R. 334-335), it would appear that that court believed that the Congressional failure to make specific provision as to the age at which a renunciation under 8 U. S. C. 801 (i)—the subsection here involved—became binding, evidenced an intent to import the common law doctrine that acts of persons under 21 are voidable or void (Cf., e. g., Halsbury, *Laws of England*, Vol. 17, p. 586). We submit that this conclusion is unwarranted.

Prior to a discussion of the legislative history and administrative interpretation of 801 (i) itself, it should be pointed out that the 18 year old minimum with respect to acts of expatriation was made general throughout the Nationality Act of 1940. Not only did Section 803 (b) adopt this minimum with respect to Section 801 (b)-(g) inclusive, but various other sections of that Act dealing with the acquisition of United States citizenship also make it evident that the enacting Congress believed that 18 should be the age at which mature and therefore binding judgments could be made with respect to nationality matters. Thus it was provided in Section 314 of that Act that an individual may become a United States citizen through the naturalization of his parents only if such naturalization takes place while the child is under 18 years of age (8 U. S. C. 714).

Cognate provisions relating to the naturalization of children at the instigation of their natural or adoptive parents, *provided they are under 18 years of age*, are to be found in sections 315 (8 U. S. C. 715) and 316 (8 U. S. C. 716) of the Nationality Act of 1940. And an applicant for naturalization on his own behalf may make a declaration of intention to become a citizen of the United States only "after the applicant has reached the age of eighteen years." Section 331 of the Nationality Act of 1940 (8 U. S. C. 731).

The Congressional purpose that 18 should be the age of discretion in this field, thus clearly shown throughout the statute itself, was specifically stated prior to the enactment of Section 803 (b). This section was proposed and its purpose was described by the Cabinet Committee which drafted the Nationality Code,⁷¹ as follows (*Codification of the Nationality Laws*, House Committee Print, 76th Cong., 1st Sess., p. 69):

The reasons for adopting this provision are obvious. It does not seem reasonable that an immature person should be able to expatriate himself by any act of his own. With regard to this point see *Ludlam v. Ludlam*, 84 Am. Dec. 193, 208; *State of Vermont ex rel Phelps v. Jackson*, 79 Vt. 504; *Ex parte Gilroy*, 257 Fed. 110, 121; *U. S. ex rel Baglivo v. Day*, 28 F. (2d) 44. It will be observed that in this subsection the age below which a person cannot expatriate himself is set at 18 years, instead of 21 years. *It is believed that a person who has reached the age of 18 years should be able to appreciate fully the seriousness of any act of expatriation on his part.* Moreover, in time of war young men are frequently accepted for military service before they have reached the age of 21 years, and, under the laws of some foreign countries males become liable for the performance of involuntary military service when they reach the age of 18 years. [Italics supplied.]

⁷¹ See footnote 70, *supra*. As below described the section was adopted as proposed save for the substitution of the letter (g) for the letter (h). Section 801 which this section modifies was also adopted substantially as proposed by the administrative committee—the only changes being an addition to the text of subsection (a), the deletion of a proposed subsection (f), and the addition of a new subsection (h).

A condensed version of this statement is also found in the report of the Senate Committee on this same legislation (Sen. Rep. 2150, 76th Cong., 3d Sess., p. 4):

Expatriation for certain specified acts may occur after a citizen has reached the age of 18 years for the reason that in many foreign countries the duties of citizenship, including that of bearing arms, begin at the age of 18 years.

Referring again to the work of the Cabinet Committee, it is also important to note its comment with respect to what became subsection (f) of Section 801, which provides:

(f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State;

The explanatory comment of the Cabinet Committee was in part as follows (Codification of the Nationality Code, *supra*, p. 67, comment on subsection (g)):

This provision is designed specifically for the use of persons who shall have acquired at birth the nationality of a foreign state, as well as that of the United States, and who, *upon reaching majority*, elect the nationality of a foreign state * * * [Italics supplied.]

Since the 18 year minimum set forth in 803 (b), both as proposed by the Cabinet Committee and as finally enacted, was specifically made applicable to 8 U. S. C. 801 (f) set forth above, an intent to make 18 years the age of majority with respect to the Nationality Act of 1940 becomes again apparent.

It may be argued, since subsections (a) and (h) were not included in 803 (b), that the enacting Congress meant to establish a different age limit with respect to those subsections, and that the failure to include the subsequently enacted subsections (i) and (j) within the purview of 803 (b) is indicative of a similar intent. Even if such a conclusion were to be reached, however, it by no means follows that the age limit applicable to those subsections is 21. No stated reason for the failure of the enacting Congress to include (a) and (h) has

been found in the legislative history of the Nationality Act. We may, however, speculate.

Subsection (a) involves, as does no other subsection of 801, a matter of comity between nations. As stated by the Cabinet Committee (Codification of Nationality Laws, *supra*, p. 66):

The Government of the United States took the position that such naturalization [of aliens] should be regarded as having terminated their original nationality and allegiance. It necessarily followed that this Government was obligated to recognize the naturalization of citizens of the United States in foreign countries as having the effect of terminating their American nationality and allegiance. This principle has been confirmed in various treaties concluded by the United States with foreign states. * * *

It is thus entirely possible that 801 (a) was deliberately omitted from the scope of 803 (b) in order to permit recognition of naturalizations occurring in countries permitting an acquisition of nationality therein under the age of 18, or to afford complete freedom in the negotiation of treaties with such countries.

There is moreover another, and perhaps equally plausible, explanation for the omission of subsection (a) from the coverage of section 803 (b). Subsection (a) was proposed by the cabinet committee in the following form (Codification of the Nationality Code, *supra*, p. 66):

(a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person;

It will be seen that this proposed subsection covered two situations—the obtaining of foreign naturalization by an individual on his own initiative, and the obtaining of naturalization derivatively through the naturalization of a parent. The accompanying explanatory comment of the cabinet committee, written, of course, prior to the decision in *Perkins v. Elg*,⁷² makes plain its belief, buttressed by the prior ruling of the

⁷² The cabinet committee report was submitted in 1938; *Perkins v. Elg* was decided in 1939.

Attorney General and the decision in *United States v. Reid* (see *supra*, p. 61), that a derivative citizenship obtained through the naturalization of a parent was binding upon an infant, no matter at what age obtained. Thus it might have been deemed inappropriate by the cabinet committee to recommend the inclusion of subsection (a) within the proviso of 803 (b). Moreover, when the enacting Congress amplified 801 (a), apparently in view of *Perkins v. Elg*, to provide a right of election to be exercised before attaining the age of 23 years in cases of dual nationality obtained derivitively, a similar desire not to create confusion by the inclusion of subsection (a) within the purview of 803 (b) might have obtained.

Whether or not these speculations as to the reason for this omission are correct—and it is recognized that certain difficulties exist with respect to the second hypothesis advanced—it is nearly impossible to ascribe to Congress an intent to establish a 21-year-age minimum with respect to subsection (a) when the general statutory scheme provided an 18-year minimum. The cabinet committee, which as above noted also excluded subsection 801 (a) from the draft of what became section 803 (b) quoted (at p. 67) with evident approval an opinion of a former Attorney General that: "Naturalization is without doubt the highest * * * evidence of expatriation." 14 Op. Atty. Gen. 295, 297. It may be suggested that other acts of expatriation set forth in Section 801 could conceivably be performed without knowledge of the consequences. This could hardly be said, however, with respect to the necessarily formalistic act of obtaining a foreign naturalization. And it was the consensus of the framers of the legislation that: "It is believed that a person who has reached the age of 18 years should be able to appreciate fully the seriousness of *any* act of expatriation." (See *supra* p. 64.) [*Italics supplied.*]

Upon the basis of the foregoing it would appear possible that the enacting Congress omitted making reference to 801 (a) in 803 (b) because it conceived that an occasion might arise for recognizing foreign naturalization obtained by persons under the age of 18, or simply because it desired to avoid possible confusion with respect to the dual nationality situation also covered therein, but it would seem incredible that its silence

in this respect indicated an intent to establish a 21 year minimum under which the obtaining of a foreign naturalization should be void.

Subsection (h) of Section 801 providing for a loss of nationality upon a conviction "by a court martial or by a court of competent jurisdiction" of "committing any act of treason or attempting by force to overthrow or bearing arms against the United States" was added to the proposed nationality code by Senate amendment.⁷³ Again it would appear that Congress may have had good reason for not setting a specific age minimum in such cases. It is familiar law that an infant who has reached an age of discretion may commit treason just as he may commit other crimes. See 52 *Am. Jur.* sec. 3, p. 796. It will be noted that subsection (h) requires that there be a prior conviction before a loss of nationality occurs. Thus opportunity for raising the defense of infancy in the trial court is accorded. The fact that such a defense would inevitably have to be considered by the trial court removed the necessity of a Congressional presumption of competency such as was made in 803 (b) with respect to the acts of expatriation set forth in subsections (b)-(g). We think it entirely inferable therefore that Congress proceeded on the assumption that anyone old enough to suffer the usual consequences of a treason conviction should be considered old enough to suffer the particular consequence of expatriation. Certainly there could be no reason for attributing to Congress an intent, entirely unspecified, to establish a higher age minimum for this most serious act than was made applicable to the actions specified in subsections (b) to (g) described *supra*, pp. 62-63.

Subsections (i)—the renunciation statute—and (j) were added to Section 801 by the 78th Congress. (Act of July 1, 1944, 58 Stat. 677; Act of September 27, 1944, 58 Stat. 746.) In neither subsection did that body specify any minimum age limit, nor did it amend 803 (b) in either case. Yet it would appear inconceivable that (j) was meant to apply only to persons 21 and over. That subsection provides:

⁷³ Compare House Reports 2396 and 3019, both of the 76th Congress. The amendment was inserted by the Senate after the Act had passed the House.

(j) Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval force of the United States.

In the House debates concerning H. R. 4257, one part of which became subsection (j), the sponsor of the bill, Mr. Dickstein, stated, "Any man, any American who leaves the country for the purpose of not serving his country in time of war is a traitor, in my judgment." He was then asked by a colleague: "I understand by that *if they are within the qualifying age* and an emergency exists then it is determined that they have left the country for that purpose?" (emphasis supplied). Mr. Dickstein answered: "That is right." 90 Cong. Rec. 3261. Again, prior to final passage of the bill, Mr. Dickstein stated that, "The purpose of the bill is to keep out of the country certain people who evaded war service and left this country after Pearl Harbor. * * * This bill will keep them out, and they will not be given a change [sic] to come back. *They are of military age.*" 90 Cong. Rec. 7725-7726. It hardly requires further demonstration that subsection (j) was intended to reach persons subject to military service at the time, nor that persons 18 years of age were subject to induction into such service prior to and after the outbreak of the last war. Sec. 3, Selective Training and Service Act of 1940 (54 Stat. 885).

The omission of a specified age limit in subsection (j), which as shown was made applicable to persons under 21,⁷⁴ by the same Congress which enacted subsection (i), in itself, we submit, raises a strong presumption that that body was not thinking in terms of a possible impact which the common law might have upon the additions it was making to the nationality laws. It follows that the Congressional failure to amend Section 803 (b) when enacting Section 801 (i) is thus immaterial, and we

⁷⁴ A subsequent administrative construction of subsection (j) has also held that an individual under 21 is subject to the provisions thereof. This conclusion was reached by the Attorney General on May 18, 1946, in the case of *In re Ismael Acosta Hernandez*, exclusion proceedings No. 56196/251.

may accordingly look elsewhere to determine the true intent of Congress.

It is important to state that it is not necessary to determine whether Congress meant in passing 801 (i) to leave the question of age at large, as we believe it did with respect to subsection (h) particularly, or whether it assumed that the general statutory scheme of establishing 18 as the age of majority would apply. This is because in the administration of that subsection the Attorney General adopted a rule that renunciations could only be executed by persons 18 and over. In so doing he was fully aware of the legislative background of subsection (i), for the Attorney General himself proposed its enactment to the Congress and appeared at Congressional hearings to give testimony concerning it. See Hearings, House Committee on Immigration and Naturalization (78th Cong., 2d Sess.) on H. R. 4103. Examination of these Hearings and of the debates demonstrates that although the bill was of universal applicability, a purpose of the bill was to reach persons of Japanese ancestry 18 years of age and over who had answered Question 28 in the negative (Hearings, pp. 37, 52, 54-55; 90 Cong. Rec. 1778-1779, 1786-1789, 1982-1984).⁷⁵ In the light of this fact, and in the light of the Attorney General's construction of 801 (i) permitting renunciations by persons 18 years of age (Cf. *United States v. American Trucking Ass'ns.*, 310 U. S. 534; ⁷⁶ *Shapiro v. United States*, 335 U. S. 1, note 13, and cases there cited), we submit that this Court should reverse the holding of the court below that a formal renunciation of United States nationality is void unless the renunciant was at the time 21 years of age or over. A contrary ruling, we submit, would not only fly in the teeth of the manifest Congressional intent but would create a further incongruity in that formal renunciations of United States nationality, if made outside this country, would be binding at the age of 18 (8 U. S. C. 801 (f)) whereas formal renunciations occurring in this country would not.

⁷⁵ It may be noted that the registration of persons 17 and over occurred in 1942, and that consequently such persons were at least 18 by July 1, 1944, when the renunciation statute was enacted.

⁷⁶ As there stated: "*Furthermore the Commission's interpretation gains much persuasiveness from the fact that it was the Commission which suggested the provision's enactment to Congress.* 310 U. S. 534 at 549. [Italics supplied.]

We submit that the court below erred in setting aside the renunciation of Inouye, and that, if jurisdiction in No. 11839 is found to exist, this Court should reverse the decisions below in that respect.

IV. The constitutional questions

The challenges made by the appellees to the constitutionality of the renunciation statute (R. 9, 14), may be roughly divided into two classifications, i. e., (1) those concerning method or procedure and (2) those having to do with fundamental power.

(1) With reference to the procedures provided by and under the renunciation statute, the appellees seem to say that they have been deprived of liberty without due process of law under the Fifth Amendment to the Constitution; that the authority to approve renunciations was improperly delegated to the executive branch of the Government, whereas it could be delegated, if at all, only to the judicial branch; that the statute constituted an unlawful delegation of legislative powers; and that the standards prescribed for renunciation are too vague and indefinite.

It is most difficult to understand the relation of these contentions to a case of this kind. Here Congress provided for the voluntary relinquishment of citizenship through unilateral action on the part of the renunciant, subject only to the approval of the Attorney General as not contrary to the interests of national defense. True, when he established procedures designed to avoid the possibility of coerced renunciations and to discourage such action on the part of persons not loyal to Japan, he may have gone beyond the strict requirements of the statute. However, he was authorized to prescribe the forms, and to designate the officials before whom renunciations were to be made; hence he would seem to have had ample authority for the measures that he prescribed. See, e. g., *United States v. Shreveport Grain Co.*, 287 U. S. 77, 85. Clearly his regulations did not transgress upon legislative functions. See *United States v. Grimaud*, 220 U. S. 506, 517; *Hirabayashi v. United States*, 320 U. S. 81, 102.

The contentions that the Congressional permission given the appellees to renounce constituted a deprivation of liberty

without due process of law under the Fifth Amendment and that the authority to approve renunciations could be granted, if at all, only to the judicial branch of the Government, are not understood. If by "liberty" the appellees have reference to freedom of choice, the renunciation statute certainly did not detract from that freedom. And, plainly, a renunciation proceeding under the statute in no sense involved a case or controversy requiring resolution through the exercise of the judicial power of the United States described in Article III of the Constitution. Accordingly, we submit, there can be no serious question as to the constitutionality of the procedural aspects of the statute.

(2) The remaining contentions advanced by the appellees as to constitutionality seem to be that the statute constitutes unreasonable racial discrimination and that a person born in the United States may not be permitted to lose his citizenship even by his own voluntary action.

Whatever the occasion for its enactment, the renunciation statute is nondiscriminatory on its face beyond withholding the privilege of renunciation where the Attorney General finds its exercise contrary to the interests of national defense, and it would be inaccurate to assume that such privilege has been exercised only by persons of Japanese ancestry. The coverage of the statute is plainly as broad as the provision for renunciations before consular officers (8 U. S. C. § 801 (f)). Clearly, the contention that the statute is unconstitutional, because unreasonably discriminatory upon the basis of race, is fallacious.⁷⁷

⁷⁷ The appellees' complaint (R. 14) that no announcement regarding means of renunciation "was made to American citizens of non-Japanese ancestry" was admitted by the answer (R. 22-23) with the explanation that "only from American citizens of Japanese ancestry were sufficient numbers of requests to be permitted to renounce received to warrant the giving of information as to how such renunciations could be accomplished". In fact, but for the professed desire of the pro-Japanese segregants at Tule Lake to renounce their citizenship, it may be doubtful that the statute would have been enacted. (See, e. g., H. Rept. 1075, 78th Cong., 2d Sess.) The record shows that "individual letters and group petitions began to come to the Department of Justice containing requests for permission to renounce citizenship" shortly after the statute was approved (R. 106). Furthermore, it is doubtful that mere announcement of the renunciation regulations had an appreciable effect upon subsequent decisions to renounce. See pp. 23-26, *supra*; cf. R. 148.

The notion that the Fourteenth Amendment to the Constitution deprived the Congress of its authority to permit voluntary expatriations seems equally lacking in merit. It is not supported by any authority of which we are aware. The Congress by the Act of July 27, 1868, 15 Stat. 223 (8 U. S. C. § 800) proclaimed that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness" and declared that any decision "of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is * * * inconsistent with the fundamental principles of the Republic".⁷⁸ This policy applies as well to American-born citizens as to others. *Perkins v. Elg*, 307 U. S. 325, 334; *Reynolds v. Haskins*, 8 F. (2d) 473, 474.

Moreover, in enacting the statute the Congress did so with knowledge of the evacuation and relocation programs.⁷⁹ When the Bill was pending before the House it closely examined most of the Constitutional questions which have been raised by the appellees.⁸⁰ For example, an amendment was offered,⁸¹ the purpose of which was to authorize courts to find that the negative answers given to the loyalty question propounded at the time of registration (see p. 12, *supra*) were voluntary acts of expatriation.⁸² However, it was argued that such a provision would be of doubtful constitutionality and the motion was de-

⁷⁸ A few days earlier, on July 21, 1868, the same Congress had declared that the Fourteenth Amendment had been ratified and was a "part of the Constitution of the United States". See U. S. C. vol. 1, p. xlv, note.

⁷⁹ As to the Congressional knowledge of the evacuation and leave clearance practices see the statements and references to legislative materials in *Korematsu v. United States*, 323 U. S. 214, 219, 228, 238, 239, 241, and *Ex parte Endo*, 323 U. S. 283, 287, 291, 295, 296, 303, 304, 309. The segregation program was caused or to some extent influenced by Congressional intervention (see p. 14, n. 21, *supra*). In recommending the renunciation legislation to the Congress the Attorney General pointed to the pro-Japanese group at the Tule Lake center. (See H. Rept. No. 1075 and S. Rept. 1029, to accompany H. R. 4103, 78th Cong., 2d Sess.)

⁸⁰ 90 Cong. Rec. 1778-1789, 1981-1992.

⁸¹ *Id.* 1985.

⁸² *Id.* 1982.

feated.⁸³ The legislation in its present form passed the House by a large majority.⁸⁴

It is suggested that this action of the Congress, which was well aware of the constitutional problems and had extensive knowledge of the evacuation and relocation programs with their attendant hardships, must be taken as a deliberate legislative decision that renunciations influenced by resultant disaffection for the United States would be voluntary and within the power of the Congress to sanction. Cf. *MacKenzie v. Hare*, 239 U. S. 299, 311-312. In these circumstances the views of the legislators are, of course, entitled to great respect. Cf. *McCulloch v. Maryland*, 4 Wheat. 316, 401-402.

We submit that the statute is clearly constitutional in all respects.

CONCLUSION

For the foregoing reasons it is respectfully submitted that there is a total lack of jurisdiction in No. 11839 and that the judgment in that case should accordingly be reversed and the proceedings dismissed. If, however, jurisdiction of such proceedings is held to exist, we further submit that the judgments in both Nos. 11839 and 12082 are erroneous and should, accordingly, be reversed.

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ERNEST A. TOLIN,
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ENOCH E. ELLISON,
Special Assistant to the Attorney General.

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PAUL J. GRUMBLY,
Attorneys, Department of Justice.

⁸³ Id. 1991.

⁸⁴ Id. 1992. The Senate considered the bill by unanimous consent and passed it without controversial debate. Id. 6617.

APPENDIX A

SECTION 401 OF THE NATIONALITY ACT OF OCTOBER 14, 1940, ch. 876, 54 Stat. 1168, as amended, as it appears in Title 8 of the United States Code, 1946 Edition:

§ 801. GENERAL MEANS OF LOSING UNITED STATES NATIONALITY.

A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

(a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: Provided, however, That nationality shall not be lost as the result of the naturalization of a parent unless and until the child shall have attained the age of twenty-three years without acquiring permanent residence in the United States: Provided further, That a person who has acquired foreign nationality through the naturalization of his parent or parents, and who at the same time is a citizen of the United States, shall, if abroad and he has not heretofore expatriated himself as an American citizen by his own voluntary act, be permitted within two years from the effective date of his¹ chapter to return to the United States and take up permanent residence therein, and it shall be thereafter deemed that he has elected to be an American citizen. Failure on the part of such person to so return and take up permanent residence in the United States during such period shall be deemed to be a determination on the part of such person to discontinue his status as an American citizen, and such person shall be forever estopped by such failure from thereafter claiming such American citizenship; or

¹ So in original.

(b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; or

(c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or

(d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; or

(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(g) Deserting the military or naval forces of the United States in time of war, provided he is convicted thereof by court martial and as the result of such conviction is dismissed or dishonorably discharged from the service of such military or naval forces: Provided, That notwithstanding loss of nationality or citizenship or civil or political rights under the terms of this or previous laws by reason of desertion committed in time of war, restoration to active duty with such military or naval forces in time of war or the reenlistment or induction of such a person in time of war with permission of competent military or naval authority, prior or subsequent to January 20, 1944, shall be deemed to have the immediate effect of restoring such nationality or citizenship and all civil and political rights heretofore or hereafter so lost and of removing all civil and political disabilities resulting therefrom; or

(h) Committing any act of treason against, or attempting by force to overthrow or bearing arms against the United States, provided he is convicted thereof by a court martial or by a court of competent jurisdiction; or

(i) Making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(j) Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States. (Oct. 14, 1940, ch. 876, title I, subch. IV, § 401, 54 Stat. 1168; Jan. 20, 1944, ch. 2, § 1, 58 Stat. 4; July 1, 1944, ch. 368, § 1, 58 Stat. 677; Sept. 27, 1944, ch. 418, § 1, 58 Stat. 746.)

APPENDIX B

The pertinent regulations of the Attorney General read as follows (9 Fed. Reg. 12241; 8 C. F. R. (Supp. 1944) 316 et. seq.):

§ 316.2 *Nationals permitted to apply for renunciation.* Any national of the United States may make in the United States a request in writing to the Attorney General, Department of Justice, Washington, D. C., for the form of "Application for Renunciation of United States Nationality."

§ 316.3 *Filing of application.* A completed and signed application for renunciation of United States nationality on the form prescribed by the Attorney General may be sent to the Attorney General, together with any certificate of citizenship, certificate of naturalization, certificate of derivative citizenship and any United States passport which may have been issued to the applicant. An applicant will be notified if it is determined upon the application that the requested renunciation appears to be contrary to the interests of national defense.

§ 316.4 *Hearing on application.* A hearing will be conducted by a hearing officer, designated by the Attorney General, upon each application for renunciation which does not appear to be contrary to the interests of national defense. The hearing officer will notify the applicant of the time and place of hearing.

§ 316.5 *Formal written renunciation of nationality.* After a hearing the applicant may file with the hearing officer, on a form prescribed by the Attorney General, a formal written renunciation of nationality and a request for the Attorney General's approval of such renunciation as not contrary to the interests of national defense.

§ 316.6 *Hearing officer's recommendation.* The hearing officer shall recommend approval or disapproval

by the Attorney General of the applicant's request for approval of the formal written renunciation of nationality. The hearing officer, in making his recommendation, is authorized to consider not only the facts presented at the hearing, but also results of any investigation and any information which may be available to him in reports of Government agencies or bureaus, and from other sources, relating to the applicant's allegiance and relating to the effect of renunciation of nationality upon the interests of national defense.

§ 316.7 *Approval or disapproval by Attorney General.* The hearing officer's recommendation and the record of the hearing and any other facts upon which it is based, will be submitted to the Attorney General for his approval or disapproval of the applicant's formal written renunciation of nationality. A renunciation of nationality shall not become effective until an order is issued by the Attorney General approving the renunciation as not contrary to the interests of national defense.

§ 316.8 *Notice of Attorney General's decision.* The applicant will be notified of the Attorney General's approval or disapproval of the formal written renunciation of nationality. Notice of the approval of renunciation of nationality shall be given to the State Department, the Alien Property Custodian, Foreign Funds Control Section of the Treasury Department, and the Federal Bureau of Investigation and the Immigration and Naturalization Service of the Department of Justice. The notice to the Immigration and Naturalization Service shall be accompanied by any certificate of citizenship, certificate of naturalization or certificate of derivative citizenship issued to and surrendered by the applicant as required by § 316.3 hereof. Upon receipt of such notice and evidence of citizenship so surrendered, the Immigration and Naturalization Service shall notify the clerk of the court in which the applicant's naturalization occurred that the renunciation of nationality has been approved and the clerk of the court shall be requested to enter that fact upon the record of naturalization.

The notice to the Department of State shall be accompanied by any United States passport surrendered by the applicant as required by § 316.3 hereof.

§ 316.9 *Effective period of these regulations.* These regulations shall be effective from the date hereof and until cessation of the present state of war unless sooner terminated by the Attorney General.

FRANCIS BIDDLE,
Attorney General.

OCTOBER 6, 1944.

APPENDIX C

WAR RELOCATION AUTHORITY ADMINISTRATIVE MANUAL

Chapter 110—Segregation

Segregation Policy 110.1

It is the policy of the War Relocation Authority to place in a separate center those persons of Japanese ancestry residing in relocation centers who by their acts have indicated that their loyalties lie with Japan during the present hostilities, or that their loyalties do not lie with the United States.

4/26/44

Supersedes Issuance of 10/6/43

Tule Lake Center 110.2

1. The name of the segregation center shall be Tule Lake Segregation Center. The post office address is Newell, California.

2. All policies of the War Relocation Authority with respect to food, clothing, health, education, employment within centers, compensation for injuries and sickness, public assistance grants, consumer enterprises, evacuee property, legal services, and all other aspects of administration and control will be in force at the Tule Lake Center in the same manner as at the relocation centers, except as otherwise provided in this chapter.

3. Residents of the Segregation Center are not internees. As segregants, they are governed by the regulations of the War Relocation Authority applicable to the Tule Lake Segregation Center, and by the relevant provisions of State and Federal law. Residents of the Center having grievances arising out of the operation of the Center or the application to them of any of the rules and regulations there in force should take them up with WRA authorities in charge of the administration of

the Center. These authorities will in turn take up with the proper State, Federal, or other officials, any matters which fall within their jurisdiction.

A. The Geneva Prisoners of War Convention of 1929 is applicable to prisoners of war and, by agreement of the United States and Japan, applicable provisions relate to interned or detained Japanese nationals. So far as the Tule Lake Center is concerned, the applicable provisions of the Geneva Convention relate only to aliens. Such provisions are not applicable to persons having dual nationality; under international law the dominant nationality of such persons is deemed to be that of the nation in which they reside, and not of the foreign nation. The Convention does not apply to United States citizens. Citizens of the United States, even though they are also citizens of another country under the laws of that country, are subject, while they are in the United States, solely to the laws of the United States and of the State in which they reside. There is no existing procedure by which citizens may renounce their United States citizenship while on United States soil. Aliens, i. e., persons not having American citizenship, have the privilege of applying to the Spanish Embassy, as the representative of the Protecting Power, for redress of grievances and for further assurance of compliance with the requirements of the Convention.

4/26/44

Supersedes Issuance of 10/6/43

B. During the war, repatriation to Japan will presumably continue to be on a reciprocal exchange basis dependent on agreements between the United States and Japan. The War Relocation Authority has accepted applications for exchange and has referred these applications to the State Department, which handles negotiations for the United States, with the request that they be considered in further negotiations. Persons desiring to record their wishes with respect to repatriation should register their desires with both the War Relocation Authority and the Spanish Embassy in order to facilitate arrangements for exchanges if and when they can be arranged. On the basis of the existing understanding with the Japanese

Government, the United States cannot send a Japanese national to Japan until the Japanese Government is willing to accept him. So far the Japanese Government has shown primary interest in persons named on lists submitted by it to the United States through the Spanish Embassy. Determination of whether a particular applicant is acceptable to the Japanese Government is not within the control of the United States Government. It is, rather, a matter between the Japanese national and his Government, through the intermediary of the Protecting Power. Therefore, persons desiring to be repatriated should address themselves to the Spanish Embassy, in charge of Japanese interests in the United States, to the end that they may request the Embassy to exert its influence with the Japanese Government in their behalf. Residents of the Center have full opportunity to use the channels of communication provided by international law.

C. It is not possible at this time to anticipate what will be the status of segregants residing at the Tule Lake Center after the war. The Project Director shall attempt to keep the residents advised of any changes that may be made in the laws governing their citizenship.

4/26/44

Persons To Be Placed in Tule Lake Center 110.3

1. All persons in the following categories shall remain in the Tule Lake Center, or shall be transferred to that center, as the case may be:

A. All persons who have formally asked for repatriation or expatriation to Japan and have not retracted their requests prior to July 1, 1943. If a Project Director should believe that residence in the Tule Lake Center by a particular person in this category would work an unnecessary hardship, he may recommend to the Director that such person be excepted from the category; and if the Director approves, such person shall be excepted.

B. All persons who, at the time of the registration for Army service and war industries purposes, answered question 28 of Form WRA-126 Rev. or DSS Form 304A in the negative, or

failed or refused to answer it, and (a) who have not changed their answers prior to the date of this instruction, and (b) who are in the opinion of the project Director loyal to Japan, or are not loyal to the United States. For the purpose of segregation, no person in this category shall be considered loyal to the United States unless he expressly changes his answer to question 28 to an affirmative and satisfies the Project Director that the changed answer is bona fide.

C. All persons to whom the Director has denied leave clearance. This category will include persons in the following classes *after hearings have been held and if and when leave clearance has been denied under Chapter 60*: (a) Persons about whom there is an adverse report by a Federal intelligence agency; (b) persons who have answered question 28 negatively and who changed their answers prior to the date of this instruction, or who answered such question with a qualification; (c) persons who have requested repatriation or expatriation and have retracted their request prior to July 1, 1943, and persons who have requested repatriation or expatriation subsequent to July 1, 1943; (d) persons for whom the Japanese-American Joint Board established in the Provost Marshal General's office does not affirmatively recommend leave clearance; and (e) persons about whom there is other information indicating loyalty to Japan.

10/6/43

Supersedes A. I. #100

2. Members of the immediate family of a person who falls within one of the three categories set forth in Section 110.3.1 shall upon their individual request be permitted to remain with such person in the Tule Lake Center, or to accompany him to that center, as the case may be. If minor members of the immediate family who do not themselves fall within one of the categories set forth in Section 110.3.1 object to residence at the Tule Lake Center every possible assistance shall be extended in helping to work out appropriate arrangements along the lines suggested in Section VI-D of Administrative Instruction No. 65 (Manual Section 70.1), dealing with minor children of persons being repatriated. For the purpose of determining

what is an immediate family the guides set forth in Section XII of Administrative Instruction No. 103 (Manual Section 30.4) shall be followed.

3. Where one member of an immediate family residing in a center other than the Tule Lake Center falls within one of the three categories set forth in Section 110.3.1, but he or some other member of such family is so ill or infirm that removal will in the opinion of the project medical officer endanger life or seriously impair health, all members of the family shall be permitted to remain in the center of residence so long as such condition continues.

4. Persons resident in the Tule Lake Center who do not fall within one of the categories set forth in Section 110.3.1, but who are so ill or infirm that their removal will in the opinion of the project medical officer endanger their lives or seriously impair their health shall be permitted to remain in the Tule Lake Center so long as such condition continues. Members of their immediate families, as defined in Section 110.3.2, shall upon request also be permitted to remain in the Tule Lake Center so long as such condition continues.

10/6/43

Supersedes A. I. #100

Priorities of Movement to Tule Lake Center 110.4

1. In general, persons will be moved to the Tule Lake Center in the following order of priority:

A. Persons who have applied for repatriation or expatriation and have not retracted their requests prior to July 1, 1943.

B. Bachelor Kibei falling within the second or third category set forth in Section 110.3.1. For the purpose of this paragraph "bachelor Kibei" shall mean a male citizen evacuee, unmarried as of the date of this instruction, who has spent a total of three or more years in Japan since January 1, 1935.

C. All others.

2. These priorities may be modified from time to time as to particular relocation centers, and priorities will be established for other persons to be moved to the Tule Lake Center.

3. The first movement to the Tule Lake Center of persons falling within Section 110.4.1 (A) shall be from the Granada, Minidoka, Jerome, Rohwer, Heart Mountain, and Central Utah relocation centers. After such persons have been moved from these centers, movement of persons from the Manzanar, Colorado River, and Gila River relocation centers shall be arranged. Priorities between relocation centers for movement of persons to be segregated for other reasons shall be established from time to time.

10/6/43

Supersedes A. I. #100

Preparation for Transfers to Tule Lake 110.5

1. A. The Project Director of each center other than the Tule Lake Center shall immediately prepare a list, by categories, of all persons in the center (1) who have requested repatriation or expatriation without retraction prior to July 1, 1943, or (2) who have been denied leave clearance (first and third categories listed in Section 110.3.1). Each such person shall be promptly notified in writing that he will be transferred to the Tule Lake Center at a date which will subsequently be made known to him. The notice shall further specify a time and place at which he and his immediate family, if any, should appear for an interview.

B. The Project Director shall cause each such person and his immediate family, if any, to be interviewed for the purpose of determining (1) whether such person is able to travel and if so whether special travelling accommodations will be necessary (to be confirmed in case of doubt by the project medical officer); (2) what members of the immediate family wish to accompany him; and (3) what further assistance is needed by the evacuee or his family. The interviewer shall notify the evacuee of the provisions of Section 110.7, dealing with transportation of property, and assist in filling out Form WRA-156 if the evacuee wishes property to be transported thereunder. Members of the immediate family may be interviewed separately wherever it is deemed advisable in order to arrive at their true preference.

C. Each project director shall inform the Director by wire not later than August 10, 1943, of the number of evacuees to be transferred under this paragraph, and the family groupings and health problems involved.

2. A. The Project Director of each center other than the Tule Lake Center shall also immediately prepare a list of persons in the center who fall within the second category listed in Section 110.3.1. If the persons on such list have not already been interviewed for the purpose of determining whether they are loyal to Japan or loyal to the United States, the Project Director shall promptly interview them for such purpose and make his determination, striking from such list the names of those who in his judgment are loyal to the United States.

B. The Project Director shall give each person on the list prepared under this Section 110.5.2 a notice and additional interview in the manner prescribed in Section 110.5.1, and the Project Director shall notify the Director of the number of evacuees to be transferred and the family groupings and health problems involved.

3. As application of center residents for leave clearance are denied by the Director, from time to time, the names of such persons shall be added to the list prepared under Section 110.5.1 above and processed as provided thereunder.

10/6/43

Supersedes A. I. #100

Preparations for Transfers to Tule Lake 110.5

4. Section 50.3 of the Manual on travel between centers does not apply to movements from a relocation center to Tule Lake. All transfers to Tule Lake shall henceforth be carried out according to the following procedure.

A. Whenever residents of a relocation center should be transferred to Tule Lake under the terms of Manual Section 110.3, or for a reason deemed justifiable by the Project Director wish to transfer there, the Project Director shall communicate with the Assistant Director in San Francisco, giving the following information:

- (1) Name(s) of person or persons
- (2) Suggested mode of travel

(3) Date by which travellers will be ready to leave

(4) Full justification for the transfer

B. The Assistant Director will check with the Project Director at Tule Lake to determine whether living accommodations are available at Tule Lake and whether the transfer is acceptable to Tule Lake.

C. If the transfer is acceptable to Tule Lake and meets with approval of the Assistant Director, he will (See WRA Handbook Section 140.4.20 covering movements of less than full trainload)—

(1) Arrange transportation if this remains to be done.

(2) Secure military permits from the Western Defense Command for travel of the evacuees through the prohibited area.

(3) Make such arrangements as he considers necessary with the proper military authorities for a military or civilian escort to accompany the travelers from the center of departure to Tule Lake.

(4) Advise both Project Directors of the final arrangements and authorize departure of the evacuee from the relocation center.

D. The center from which evacuees transfer will prepare Departure Advices, WRA-178, for each person transferring, and Tule Lake will prepare Admission Advices, WRA-177, for each person arriving, showing the actual date of departure or admission, in accordance with the Statistics Handbook, 50.8.

8/30/44

Release #115

Preparation for Transfers From Tule Lake 110.6

1. The Project Director of the Tule Lake Center shall immediately prepare two lists containing the names of the following classes of persons:

A. All persons falling within the three categories set forth in Section 110.3.1, who are to remain in the Tule Lake Center, together with their immediate families (hereinafter called the Resident List). If all the persons falling within the second category set forth in such paragraph have not already been

interviewed for the purpose of determining whether they are loyal to Japan or loyal to the United States, the project director shall promptly interview them for such purpose and make his determination, striking from the Resident List the names of those who in his judgment are loyal to the United States, together with the names of the members of their immediate families, and adding such names to the list provided for immediately below.

B. All other persons (hereinafter called the Removal List).

2. A. Each person whose name appears on the Removal List shall be promptly notified in writing that the center has been selected as the center of residence for evacuees loyal to Japan; that if his relocation is not arranged for prior to the time WRA determines it is necessary for him to leave he will be transferred to another center, unless he is physically incapacitated; that he is requested to appear at a designated time and place for an interview; and that at that interview he will be requested to express preferences for transfer as between Central Utah, Granada, Heart Mountain, Jerome, Minidoka, and Rohwer, which preferences may have to be disregarded but will be heeded if possible to do so.

B. The Project Director shall cause each such person to be interviewed, preferably by family groups, to determine: (1) whether the evacuee is able to travel and if so whether special traveling accommodations will be necessary (to be confirmed in case of doubt by the project medical officer); (2) whether he would prefer transfer to Central Utah, Granada, Heart Mountain, Jerome, Minidoka or Rohwer (listing all in order of preference, and making it clear that his first preferences may have to be disregarded); and (3) what further assistance is necessary. The interviewer shall notify the evacuee of the provisions of Section 110.7 hereof, dealing with transportation of property, and assist in filling out Form WRA-156 if the evacuee wishes property to be transported thereunder.

C. During the month of August a special effort will be made to facilitate the relocation of residents of the Tule Lake Center who are on the removal list. No person on the removal list shall be permitted to request repatriation or expatriation, or to change his answer to question 28 from an affirmative to a

negative or other answer raising real doubts as to loyalty, until the large movements under this instruction to and from the Tule Lake Center have been completed.

D. The Project Director shall inform the Director by wire not later than August 20 of the number of evacuees on the Removal List who have been processed for transfer to another center, the family groupings and health problems involved, and the respective preferences expressed for Central Utah, Granada, Heart Mountain, Jerome, Rohwer and Minidoka. If at all possible, processing should be completed by that date. If it is not, the Project Director shall thereafter wire such information to the Director weekly until processing has been completed.

3. Each person falling within one of the three categories set forth in Section 110.3.1 (whose name will appear, together with the names of the members of his immediate family, on the Resident List) shall be promptly notified in writing that he has been designated to remain in the center. If there are members of his family who do not fall within one of these categories, he shall further be notified of that fact and requested to appear at a designated time and place, together with such members, for an interview. Such interview shall determine whether any such family member wishes to leave the center (it being made clear to him that it may be difficult for him to leave the center unless he exercises the option now). If he wishes to leave, his name shall be added to the Removal List, the interviewer shall proceed with the interview, and such person shall be processed, as if his name had originally appeared on the Removal List.

4. As additional applications of Tule Lake residents for leave clearance are denied, the names of such persons shall, if on the Removal List, be transferred to the Resident List, and they shall be promptly notified that they are no longer eligible to leave the center. As additional applications of Tule Lake residents for leave clearance are granted, the names of such persons shall, if on the Resident List, be transferred to the Removal List, and such persons shall be processed as provided in Section 110.6.2 above.

10/6/43

Supersedes A. I. #100

Transportation of Property of Transferees 110.7

1. All evacuees transferring from one center to another under this instruction shall be notified to carry with them, as hand baggage and checkable baggage, sufficient clothing and necessary household and personal effects to maintain them for at least 60 days, in view of transportation and other administrative difficulties that will necessarily be involved in transporting their property separately.

2. All furniture and other property in the apartments of such evacuees or stored in warehouses at the center of departure shall be crated and transported to the center of destination upon request of the evacuee presented to the Project Director upon Form WRA-156. Shipment to the new center at Government expense shall be in addition to transportation furnished under Administrative Instruction No. 78, (Manual Chapter 100). The cost shall be borne by the center from which the evacuee is transferred.

10/6/43

Supersedes A. I. #100

Responsibilities in Connection With Movement of Transferees 110.8

1. A. Upon the basis of information furnished him from time to time by the Project Directors under this instruction the Director will determine the time of movement and the number of evacuees to be transferred in each movement from one center to another. A tentative schedule of initial movements will be furnished to the project directors at the earliest possible date.

B. The Director will make all arrangements for common carrier facilities for the movement of each group of evacuees, and for military escort where necessary. He will further obtain any military permits that may be necessary for the travel of evacuees in the evacuated areas.

C. The Director will wire each Project Director concerned, at least five days before the date of departure, of the number of persons to be transferred and the family groupings involved, the transportation facilities arranged for, the time of departure and arrival, and all other details in connection therewith. (Or-

dinarily this will merely confirm a tentative schedule already furnished to the project directors.)

2. A. The Project Director of the center of departure shall be responsible for completing all other arrangements to be made at the center in connection with each movement. He shall designate a suitable WRA representative to accompany each movement. Such person shall be responsible to the Director while en route, and shall be regarded as the Director's representative.

B. On or before the date of departure the Project Director shall ship to the Project Director of the center of destination all project records pertaining to the transferees, including Form 12, Form 26, the social data registration form, individual census record, immunization card, medical and hospital record, repatriation record, leave clearance docket, employment record, and any school, welfare, parole, or other record. When a movement consists of a trainload such records shall be shipped on the same train.

C. The Project Director shall furnish the WRA representative who is to accompany each movement with two copies of the train list, and the representative shall present such copies to the Project Director of the center of destination upon arrival. Immediately after departure the Project Director shall forward one copy of the train list to the Director.

3. A. The Project Director of the center of destination shall be responsible for arranging for housing, beds, and bedding for all transferees, in accordance with present WRA policy.

B. The Project Director shall check the arriving transferees against the train list, and shall promptly notify the Washington office of their arrival and of any variances from the train list if any.

C. The Project Director shall do everything within his power of establish transferees in project jobs fitted to their abilities and to do everything practicable to fit them into the social life of the center. To the latter end he shall obtain the cooperation of the community council and other evacuee organizations in the center.

10/6/43

Supersedes A. I. #100

Departure from Tule Lake Center 110.9

1. No person remaining at the Tule Lake Center or transferred thereto under the provisions of this chapter shall be granted seasonal or indefinite leave from the Tule Lake Center.

2. No person remaining at the Tule Lake Center or transferred thereto under the provisions of this chapter shall be transferred to another center except pursuant to the following provisions:

A. Persons remaining at the Tule Lake Center solely because of illness or infirmity (see Section 110.3.4) shall be transferred to another center as soon as such transfer will not in the opinion of the Project Medical Officer endanger their lives or seriously impair their health. Family members who have remained with them who do not fall within one of the three categories set forth in Section 110.3.1 above may be transferred to other centers prior to such time upon their individual request.

B. Persons resident at the Tule Lake Segregation Center to whom leave clearance has not been denied may apply for and receive leave clearance in accordance with the provisions of Section 60.10 of the Leave Handbook. Any such person who has not previously filled out Form WRA-126 or DSS form 304A should fill out Form WRA-126 as an application for leave clearance. If the form has previously been filled, the applicant should file with the Project Director a letter requesting a leave clearance hearing. Persons who had already received leave clearance before the Segregation Center was established, and who remained at or removed to the Segregation Center for family reasons or other special reasons (except those who remained solely because of illness or infirmity, and members of their families) but who later wish to leave the Segregation Center should file with the Project Director a letter requesting a supplemental leave clearance hearing. After leave clearance is granted by the Director, the applicant shall be transferred to a relocation center, where he may apply for indefinite or seasonal leave.

C. Any person whose application for leave clearance has been denied may, while a resident of the Segregation Center, and not otherwise, file an appeal with the Board of Appeals

for Leave Clearance in accordance with the procedure prescribed by Section 60.11 of the Leave Handbook.

If, as a result of this appeal, leave clearance is granted by the Director the applicant shall be transferred to a relocation center, where he may apply for indefinite or seasonal leave.

4/26/44

Supersedes Issuance of 10/18/43

Government and Control 110.10

1. The Project Director of the Segregation Center is responsible for the maintenance of law and order within the Center, and for the enforcement of all regulations established by the War Relocation Authority for the administration of the Center. The Project Director has full disciplinary authority over the evacuees in relation to all offenses committed by them within the Center, though cases involving offenses against State or Federal law will be referred by the Project Director to the proper officials for action. In determining what acts constitute offenses and in setting up the procedure for conducting hearings on account of offenses committed, the Project Director shall be governed by the provisions of Manual Section 30.1 in so far as they are relevant.

2. The Project Director shall, when need arises, establish at the Center the position of Hearing Officer. The function of the Hearing Officer will be to assist the Project Director in the handling of cases involving disciplinary action. In hearing cases the Hearing Officer shall be governed by the same rules which govern the Project Director in conducting hearings. The Hearing Officer will be directly responsible to the Project Director and shall make to the Project Director a full report on each case heard, with transcript and record thereof, together with his recommendation as to the decision to be rendered therein. No decision shall be effective until it has been approved by the Project Director.

3. The residents of the Segregation Center will be invited to establish a Representative Committee. The membership of this Representative Committee shall be selected by orderly, representative, elective procedures. The members shall be

selected on a geographical basis to represent residential areas within the Center, shall be selected for fixed periods of time, and the total membership of the Committee shall not be greater than twelve persons.

The function of the Representative Committee shall be that of acting as the official representative of the residents of the Center in communicating to the Project Director the viewpoints, attitudes and requests of the residents, in conveying to the residents information concerning WRA regulations and determinations affecting them, and in advising with the Project Director on matters as to which collaboration between the Administration and the residents is needed.

4/26/44

Internal and External Security 110.11

1. Under the existing Memorandum of Understanding between the United States Army and the War Relocation Authority, the military police unit stationed at the Segregation Center will be responsible for patrolling the external boundaries of the Center and for patrolling certain fences and manning certain watch towers between the Administrative Area and the residential area for segregants. Subject to such arrangements as may be made with the military authorities, the Project Director may request the detail of detachments of military police to assist in the arrest of individuals or the quelling of disturbances when, in his judgment, such assistance is needed. Other arrangements for close cooperation between the War Relocation Authority administrative organization and the military police unit may be made as they become desirable.

2. The Internal Security Section shall include an adequate staff of appointed police officers. Such officers may carry firearms within the evacuee residential area only when expressly authorized by the Project Director to do so. This authorization shall be limited to emergency cases such as making arrests, and shall be subject to such administrative control as the Project Director shall deem necessary. Patrol cars used by the police will be supplied with two-way radios, tear gas bombs, and such other law enforcement equipment as may be authorized by the Project Director in cases of emergency. Guards at the gates

between the Administrative and residential areas, and guards and patrolmen stationed in the various sections of the administrative area and responsible for the protection of life and Government property in those areas, may carry firearms. All firearms required by the internal security force, when not in use, shall be maintained in an armory to be established by the War Relocation Authority at a safe place within the Administrative Area.

3. As conditions warrant, an evacuee patrol force will be recruited and trained for assisting in the preservation of law and order within the evacuee residential area. The Project Director shall designate the type of police work in which the evacuee patrol force shall from time to time engage, and may add to the duties of the evacuee patrol force as conditions warrant.

4/26/44

Center Services and Activities 110.12

1. Freedom of religion for all residents will be protected. State Shinto, which is nationalistic rather than religious in character, will not be permitted at the Center.

2. Elementary and high schools of an American type, conducted in English, will be provided at Government expense. Nursery school education necessary to prepare pupils for entrance into the American type elementary schools will be provided. A limited adult education program including vocational training essential for project operation, English, or Americanization classes may be provided as the need arises. Such other types of schools as may be desired by the evacuees may be operated in WRA buildings but must be financed, staffed, and otherwise supplied by the evacuees without cost to the Government. The use of buildings and the scheduling of classes in order to avoid conflicts between the English and Japanese type schools will be arranged through the administrative staff and the responsible evacuee representatives.

3. Group activities of an American type will be supported and definitely encouraged for those interested in such programs. Japanese social and cultural activities will be permitted without expense to the Government, but demonstrations that may lead

to disturbances of the peace of the community are prohibited.

4. The Project Director may arrange for the establishment of a project newspaper which may, if he desires, carry both Japanese and English sections. The paper will be supervised and censored by appropriate representatives of the Project Director.

5. An agricultural program may be worked out in collaboration with the residents of the Center.

6. Industrial enterprises may be established to produce materials or equipment for use within the Center.

10/17/44

Supersedes Issuance of 4/26/44

Release #132

Visiting to and From Center 110.13

1. Short term leave will be granted only when the granting of such leave is in the interest of the Government. Leave will not be granted in cases where the reasons therefor are of concern primarily to the evacuee, but it may be in the interest of the Government to grant leave in cases of extreme personal emergency involving sickness or death, litigation, or important property adjustments, and the Project Director is authorized to exercise his discretion in the granting of leave in such cases. In such cases WRA will not pay transportation or other costs unless the segregant is without funds or under unusual circumstances in which the Project Director deems payment by WRA to be proper.

2. An escort shall be provided in all cases in which an evacuee leaves the center on short term leave. The Project Director may in his discretion require that the expenses of the escort be borne, in whole or in part, by the evacuee.

3. No visitors to the Tule Lake Segregation Center, except members of the armed forces in uniform, will be permitted except on the basis of permission secured in advance from the Project Director, who will establish such procedure for the issuance of visiting permits as he deems proper. Rooms will be assigned by WRA outside the evacuee residential area for the

accommodation of overnight visitors. Rooms outside the evacuee residential area will also be provided where visitors can talk with residents of the center whom they are visiting. Visitors will not be allowed within the evacuee residential area except with the express permission of the Project Director. Visitors will not be housed in evacuee quarters during their visits.

4. Soldiers in uniform visiting the center may make arrangements for quarters in the Military Police area, or in the Administrative Area, and will be expected to occupy such quarters at night. During the day they will be permitted such access to the evacuee areas as the Project Director may authorize.

4/26/44

Contraband and Censorship 110.14

Mail, except first-class, and packages will be subject to inspection by the Army, as provided in Army regulations established for the Center. There will be no censorship of first class mail except for the residents of Area B and of any isolation center which may be established outside the project. (See section 110.15.) Telephone calls by segregants must be limited to emergency calls, must be conducted in English, and will be monitored and recorded. All telegrams sent from the Center must be in English.

4/26/44

Administrative Separation of Residents Within Center 110.15

1. In order to promote the orderly administration of the Center and to maintain peace and security for the residents, it will be necessary from time to time further to restrict the movement and activities of persons whose influence or actions may be disruptive of the operation of the Center. Such persons, after investigation and decision by the Project Director, will be transferred either to a separate area within the Center, designated herein as Area B, or to an isolation center outside the project. Since such further separation of individuals is a purely administrative arrangement to secure the peaceful and orderly administration of the Center, only such investigation

need be made as is requisite for an administrative determination by the Project Director. The following procedure will be employed in making such determinations.

A. The Project Director will establish at the Center a Fact-Finding Committee consisting of the Assistant Project Director in Charge of Community Management, the Head of the Internal Security Section, and the Project Attorney. It shall be the duty of the Fact-Finding Committee to secure and examine any evidence which is available at the Center, or which can without undue delay be secured from any other source, bearing upon the activities of any individual suspected of past or probable future interference with the peaceful and orderly processes of center administration. After review of all the evidence available to the Fact-Finding Committee, that Committee will submit to the Project Director a docket for each individual case considered by it, with its appraisal of the evidence and its recommendation as to whether, in the interest of a peaceful and orderly administration, the individual should be transferred to Area B or an isolation center.

B. Upon receipt of the docket from the Fact-Finding Committee, the Project Director shall review the evidence and recommendations submitted by the Committee, and may in his discretion hold an interview with the person whose transfer is under consideration. No interview need be held in cases in which the evidence supporting the Committee's recommendation is so clear as not to leave room for any reasonable doubt as to the correctness of the recommendation.

If an interview is held, the Project Director shall inform the person interviewed of the nature of the reports and evidence which have been produced concerning him, and shall allow him to make such further comments or statements, or produce such further evidence, as he may desire. If the Project Director concludes that the individual's continued residence in the main area of the center is dangerous to the peaceful and orderly administration thereof, he may order his transfer to Area B or an isolation center.

2. Residence of any individual in Area B or in an isolation center shall be for an indefinite period. Any individual who wishes to be transferred to and permitted to reside in the main

area of the Center may at any time risk to be interviewed by the Project Director and may submit further information bearing upon his case. The Project Director shall at his convenience hold further interviews and examine all information and evidence submitted. If the Project Director concludes that transfer of the applicant, or of any other individual residing in Area B or in an isolation center, to the main area of the Center will involve no danger to the peaceful and orderly administration thereof, he shall order such transfer.

3. A. All policies of WRA applicable to the main area of the Center shall be applicable to Area B and to any isolation center which may be established, except that:

(1) All mail going into or coming from Area B or an isolation center will be censored.

(2) No visiting will be permitted between the residents of Area B or the isolation center and the main area of the Center except under extraordinary circumstances and with the express permission of the Project Director.

(3) Visiting with the residents of Area B or the isolation center will not in any event be permitted within the physical limits of Area B or the isolation center, but may take place only in rooms provided for the purpose outside the evacuee residential area and in the presence of witnesses if the Project Director so determines.

(4) Families of individuals removed to Area B or to an isolation center will not be allowed to accompany such individuals into the separated area.

B. Patrol of the external boundaries of Area B and of the isolation center will be the responsibility of the Military Police, in accordance with agreements between the War Relocation Authority and the War Department.

4. Should later developments require the transfer of any women into a separated area, separate living quarters and feeding arrangements will be provided for them.

Nos. 11839 and 12082

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

TOM C. CLARK, Attorney General of the United States, and WILLIAM
E. CARMICHAEL, District Director, Immigration and Naturalization
Service, United States Department of Justice, District 16,

Appellants,

vs.

ALBERT YUICHI INOUE, MIYE MAE MURAKAMI, TSUTAKO
SUMI and MUTSU SHIMIZU,

Appellees.

GEORGE C. MARSHALL, as Secretary of State,

Appellant,

vs.

MIYE MAE MURAKAMI, TSUTAKO SUMI and MUTSU SHIMIZU,

Appellees.

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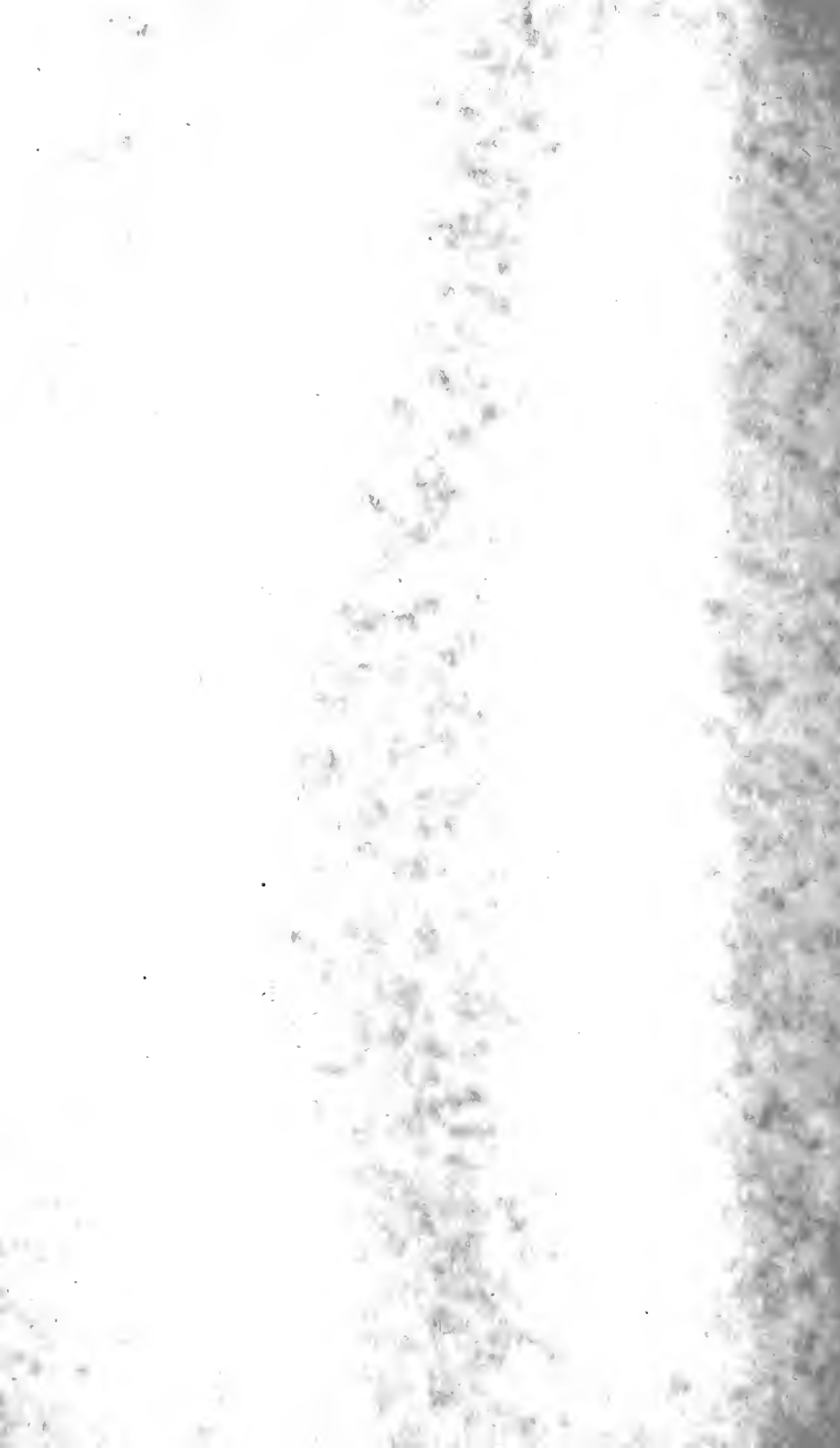
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Appellees.

BRIEF FOR APPELLEES.

Decisions Below.

The judgment of both courts below held the renunciations of appellees, pursuant to 8 U. S. C. 801 (i) invalid [R. 369, M. R. 53].¹ Both courts made detailed Findings of Fact [R. 341, M. R. 30] and included therein express findings that the renunciations by appellees were not volun-

¹The same designations to the records as followed by appellants (B. 1, note 1) will be used here. That is, to No. 11839 by the symbol "R" and to No. 12082 by the symbol "M. R."

tary or of their own free will [R. 366, 367; M. R. 50]. In addition, in case No. 11839, the Court concluded that as a matter of law appellee Inouye, being under the age of 21, was under a legal disability to renounce [R. 367]. The opinion in No. 11839 is reported at 73 Fed. Supp. 1000. No opinion was written in No. 12802.

Jurisdiction.

This Court has jurisdiction under new Title 28 U. S. C. Section 1291.

Statement of Facts.

The appellees were born in the United States and thus held United States citizenship as native-born Americans. They have at no time committed, been charged with, or even been suspected of, any crime or offense against the United States, nor of any disloyal or detrimental act to the United States. They are, however, of Japanese ancestry. They here seek a re-affirmation of their citizenship which, according to appellants, they irrevocably lost in the renunciation of citizenship program, which was the culminating step in the war-time series of racial measures and restraints imposed on West Coast citizens of Japanese ancestry [R. 1-15; M. R. 2-15].

1. BACKGROUND OF RENUNCIATION.

(a) Commencement of Program Against Citizens of Japanese Ancestry.

For more than three months after the outbreak of the war, security on the West Coast was safeguarded without racist measures; while a large number of aliens of Japanese ancestry were interned, these internments were effected under the general program affecting aliens of enemy na-

tionality.² But about the middle of January, 1942, expulsion from the West Coast of all persons of Japanese ancestry—a measure which had been periodically advocated as a means of eliminating economic competition from this minority—was again urged by a number of West Coast propagandists, organizations, and political figures; and a campaign was commenced for the expulsion of all persons of this ethnic group, regardless of American citizenship or individual loyalty.³ In February, General J. L. DeWitt, West Coast commander, formulated and recommended to the War Department a plan for such mass racial expulsion; and on February 19, 1942, the Executive Order under which the expulsion and other orders against persons of Japanese ancestry were thereafter issued, was promulgated. General DeWitt subsequently explained

²H. R. Rep. No. 2124, Interior Report of Committee Investigating National Defense Migration, 77th Congress, 2d Sess. (1942), 27-28, 157-160; T. & N. 4-5.

As in appellants' brief, authoritative documents setting forth facts of general knowledge will be cited herein, and may be judicially noticed by this Court under well-established doctrine. See *Hirabayashi v. United States*, 320 U. S. 81, 102. By virtue of this doctrine the study made under the auspices of the University of California by Thomas and Hishimoto entitled "The Spoilage," could be relied upon herein, even aside from its incorporation in the record. Compare Appellants' Brief (hereinafter abbreviated App. Br.) note 6. "The Spoilage" will, following appellants' practice, be referred to as "T & N."

³T & N, 17-19; House Report, cited *supra* note 2, 139-156. In Hawaii, where there was no history of economic competition and expulsion attempts, there was no agitation for mass expulsion nor were any special restraints imposed on persons of Japanese ancestry, though they there constituted thirty-seven per cent of the total population as compared to less than two per cent on the West Coast. See 16th Census of the United States, Population, 2d Series, for California, p. 10; for Oregon, p. 10; for Washington, p. 10; for Hawaii, p. 21, House of Representatives Report No. 2124, 77th Cong., 2d Sess. (1942) 92, 96; McWilliams, *Prejudice* (1944) 141-146.

and justified the mass racial expulsion on the basis that all persons of Japanese descent were "subversive" members of "an enemy race" whose "racial strains are undiluted," that they constituted "over 112,000 potential enemies . . . at large today along the Pacific Coast" and that there was "no ground for assuming any Japanese . . . will not turn against this nation."⁴ General DeWitt thus ignored American citizenship, clearance by the F. B. I. and the other investigative agencies which had studied this group, individual demonstrations of loyalty to this country and opposition to Japanese imperialism, and the war-time record of these people both before and after the expulsion.⁵ But it was not General DeWitt's racist view that determined the final extent and outcome

⁴Final Report, Japanese Evacuation from the West Coast, 1942, submitted by Lt. Gen. J. L. DeWitt to the Chief of Staff, dated June 5, 1943 (hereinafter termed Final Report), Preface.

⁵Investigative reports had been compiled over a period of years as to the West Coast population of Japanese ancestry and showed that there was no reason to suspect that the great majority of the 70,000 native-born American citizens were in any way potentially dangerous. See Ringle, *The Japanese in America*, Harper's Magazine, October 1942, 489 (see p. 564 with respect to the author's function, as a Naval Intelligence officer, to study the West Coast Japanese); McWilliams, *Prejudice* (1942) 114-115.

General DeWitt noted in his report that no act of sabotage had in fact been committed prior to the expulsion, but he did not permit this evidence to shake his assumption of danger, stating that the very fact that no sabotage had been committed was disturbing evidence that it would be (Final Report, at p. 34). It may be observed that in fact the record of no sabotage by resident persons of Japanese ancestry continued not only during the eight months after Pearl Harbor during which the expulsion was gradually undertaken, but during the rest of the war [R. 112], nor was any resident person of Japanese ancestry found to be engaged in espionage during the entire period, nor was there ever any serious attempt by any of the evacuees to escape from the detention camps [R. 221]. Further it is to be observed that the principal defendants charged with espionage in pre-Pearl Harbor cases were Caucasians. See Annual Report of the Attorney General (1937) 76; McWilliams, cited *supra*, at 110-111.

of the expulsion; rather the determinant was the racial hostility of Caucasian residents of the interior. The original program merely to expel persons of Japanese ancestry from a coastal strip and allow them to resettle in the interior of California and in other states, was changed to one of expulsion from the whole of the State of California, and detention in detention camps; this change was made because the residents of the interior states expressed strong antagonism to resettlement in their states, due in large part to their unwillingness to accept the Coast's "undesirables," and as well as to fear of economic competition from the resettlers.⁶ Because of this attitude General DeWitt inaugurated detention so as to prevent "any untoward incident" and to make the evacuation more "orderly."⁷ Detention thus was imposed because of the situation arising from the evacuation, rather than because of the character of the evacuated population; this phenomenon, of each step in the program against persons of Japanese ancestry engendering consequences and conditions which in turn were largely responsible for the next step, was typical of ensuing phases of the program as well [see R. 296].

⁶T & N, 7-13, 24-25.

⁷See contemporaneous statement of General DeWitt's Assistant Chief of Staff, Civil Affairs Division, who recommended detention, in House of Representatives Report No. 1911, Preliminary Report of Committee Investigating National Defense Migration, 77th Cong., 2d Sess. (1942) 6, 8. And see to the same effect *Ex parte Endo*, 323 U. S. 283, 295-296, quoting General DeWitt's Report.

That the expelled persons would not in any event have forced themselves into hostile communities is indicated by the fact that all of an initial group which was expelled and given the option of going to an Army shelter or interior locations of their own choice, went to the shelter. See Final Report, at pp. 107, 109, 49, 363.

(b) Mechanics of Evacuation and Detention.

The evacuation and detention were effected by a series of orders by General DeWitt, each one notifying all persons of Japanese ancestry in a designated locality to report for evacuation six days subsequent to the issuance of the order, and stating that they could take with them from their homes only a minimum of personal possessions. They were not notified whether the evacuation was permanent or temporary, or what would follow their reporting for evacuation, either immediately or ultimately. Employment connections were severed, property was sold at great sacrifice, and business and other enterprises representing life-time's of labor virtually wiped out [T & N 13-17; see Final Report, at pp. 55-64]. When persons of Japanese ancestry reported for evacuation, they found themselves transported under military guard to crude so-called "Assembly Centers," which were mainly hastily converted race-tracks. There they remained, under armed guard, with continued indiscriminate en masse treatment as prisoners, for periods ranging up to six months [T & N 13-14, 22-23; Final Report, c.X; House Report cited, *supra*, note 2, at p. 40]. From these Centers they were removed to War Relocation Authority detention centers, which while somewhat less crude, were likewise extremely crowded and uncomfortable with inadequate recreational, occupational, and other facilities [T & N 26-33].

The appellees in No. 12082 were in the WRA center known as the Tule Lake segregation center at the time of the renunciation program. This center was established in the following manner:

(c) Segregation.

Largely in order to satisfy public clamor against the minority of Japanese ancestry, which had been whetted, rather than deterred, by the evacuation,⁸ the WRA, in July, 1943, devised a set of criteria by which it could segregate a group of the evacuees for the purpose of according to them more rigorous treatment than that which was being condemned as overly sympathetic. Since none of the evacuees had performed any act of disloyalty or of any reprehensible nature, and since the intelligence investigations indicated no reason to restrain more than a handful as individually even potentially dangerous, some other criteria had to be devised [R. 94, 224-5; see App. Br. 24]. As the Project Attorney at Tule Lake stated with respect to segregation:

“I am not prepared to say whether or not this procedure for making the determination of what individuals . . . should be gathered for segregation . . . was the best that could be devised. However, . . . under the pressure of public opinion, under the ‘yammering’ of certain elements of the public press, and under the bedevilment of prominent officials, the War Relocation Authority had to do a sorting job which affected some 110,000 residents . . . within an inconscionably short space of time, and under a procedure so hurried, so inconsiderate of human exigencies, and so complicated by relationships with other government agencies that no responsible official of the War Relocation Authority itself would maintain that a good job had been done” [R. 245].

For the most part the War Relocation Authority utilized requests by the evacuees for repatriation or expatria-

⁸McWilliams, *Prejudice* (1944) p. 1.

tion to Japan as a basis for segregation, though it is unanimously conceded that many of these requests were motivated by numerous considerations which had no bearing on loyalty. Such requests came about because of the efforts of the United States Government, commencing in the summer of 1942, to arrange for the exchange of American citizens who were interned in Japan, in return for Japanese aliens or persons of Japanese ancestry in the United States. Many of the evacuees requesting repatriation or expatriation did so because they had lost all hope of reestablishing a decent life for themselves and their children in the United States. For, by the evacuation and detention the Government itself appeared to approve and entrench the racial discrimination which persons of the Japanese race had struggled to overcome in their pre-evacuation life; this fact was a source of great discouragement with respect to their future in the United States, as was the destruction by the evacuation of their hard-won economic and social foothold, the acts of violence against them prior to evacuation and against those few who left detention on a parole basis, and the agitation to expel them permanently from the West Coast, and to deport them therefrom in case of their return. Even when citizens did not themselves feel entirely hopeless about their future in the United States, some requested expatriation following repatriation requests by alien parents or spouses, because of their desire to maintain the family, a desire which was intensified by the general insecurity of their lives.⁹

⁹On the repatriation requests generally, see R. 354, 36, 221-222; War Relocation Authority Report, quoted *infra*; Statement of Acting Director of WRA, Hearings before House Committee on Immigration and Naturalization, 78th Cong., 2d Sess. (1944) 57-58; T & N, 95-96.

Finally, a highly important factor in deportation requests was the fact that many evacuees, while hoping there would be a chance to reestablish their lives in the United States after the war, had an extreme fear of making this attempt for the duration of the war, because of the intensification of racial prejudice engendered by the war. Such evacuees hoped to find at Tule Lake a wartime refuge in which they could secure safety and stability for their families and avoid the relocation which was being made from the other camps [R. 37; T & N 88]. The extent of a feeling of hopelessness, or a desire for refuge as a result of the rabid racial feeling and the evacuation and detention varied, of course, with the individual, depending not only on his pre-evacuation experiences and his losses at that time, but also on the manner of his evacuation itself, which varied in its harshness [T & N 22-23]. But all authorities agree that the need for "protective custody" due to racial prejudice, which was the reason detention was originally undertaken, was strongly felt as a necessity by many of the evacuees themselves and was a salient influence on their conduct at the time of segregation and throughout the detention program. However, in order to secure such refuge the evacuees *could not affirm a desire for it, but had to bring themselves within the classifications established by the War Relocation Authority* for those deserving of segregation. Thus, many evacuees requesting deportation did not in fact desire such deportation but hoped by virtue of the request that they could secure wartime protection. In this respect another phenomenon that was conspicuous throughout the detention program was evident in the segregation procedure: that is, the detainee's making of a statement for the purpose of securing as great personal and family security as possible

within the very limited opportunities open to him, regardless of whether the statement reflected the sentiment which the War Relocation Authority was theoretically attempting to ascertain, [R. 37, 248-249, 225].¹⁰

The other major basis for segregation was the answers given to the so-called "loyalty" questionnaire. Only citizens of Japanese ancestry were forced to answer this questionnaire and no other citizens, even those of enemy ancestry, were similarly interrogated. The distribution of the loyalty questionnaire occurred in the following manner:

Despite the fact that approximately 600 soldiers of Japanese ancestry had been summarily discharged from the Army in February, 1942 "for the convenience of the Government," and were thereafter included in the evacuation and detention [R. 222-3], the Army in February, 1943, made an attempt to recruit in the detention camps special combat teams of American citizens of Japanese ancestry. A questionnaire was circulated in the camps by the Army and WRA in combination asking whether the citizens was willing to serve in combat wherever ordered, or, in the case of females, to volunteer for the Army Nurses Corps, or the WAAC, and whether he or she would swear unqualified loyalty to the United States, and forswear allegiance to Japan. Because of the Army's participation in the registration, and the general method of its conduct, the registration was generally viewed solely as a device for getting recruits; it was generally believed

¹⁰The lack of correlation between a repatriation request and loyalty is indicated by the fact that none of the aliens segregated on this basis had been interned as dangerous enemy aliens despite the unusual breadth given to this classification in the case of Japanese [T & N, 5].

that the question of loyalty could not be answered affirmatively without volunteering to serve in the Army, and in fact those who attempted to do so were generally maneuvered into volunteering [R. 292]. Further, because of the preceding discharges from the Army, the en masse treatment of citizens of this race as "dangerous" in their evacuation and detention under military guard, and the Army's stated intention of placing them in special teams, it was commonly believed that an attempt would be made to put the recruits into special Jim Crow labor battalions [R. 292; McWilliams, p. 184].

An affidavit submitted by the Government states that negative answers to the questionnaire may have been due to "mistake," "distress," "confusion," or "resentment" [R. 93, 112]. A statement by the WRA contemporaneous with the registration explained the reasons more specifically, as follows:

"Underlying the resistance to registration that prevailed . . . two factors stand out as primarily important: (1) evacuee resentment against the government resulting from evacuation and detention in relocation centers and (2) administrative miscalculations and errors of judgment both in the explanation and the execution of the registration program . . . After undergoing the extremely trying experiences of evacuation and the rigors of several months' detention . . . a considerable minority—particularly among the citizen group—was deeply resentful against the Federal Government and highly suspicious of any action it might take affecting their future status. This point of view is most sharply reflected in some of the qualified answers to Question 28 (regarding loyalty), such as 'Yes, if my civil rights are fully restored' . . . Some of the most thoroughly

embittered citizens tended to regard the whole enlistment and registration as 'just another government trick'¹¹ and nearly 3000 of them actually went to the point of requesting expatriation to Japan. . . .

"From the very beginning, the recruitment (for the Army) tended to obscure the real significance of registration . . . It is probably literally true that hundreds of the evacuees went through the registration without any real understanding of the significance of Question 28"¹²

Another considerable factor in the negative answers was the same view that had been reflected in some of the repatriation requests—that it was expedient to give a negative answer in order to secure refuge at Tule Lake for the duration [R. 113, 248, 225-226; T & N 89, 91].

Nevertheless, despite official knowledge of the extent to which neither deportation requests nor loyalty answers reflected "loyalty," or "dangerous" potentialities, the segregation was carried through on this basis. Thus, as will be seen in connection with the renunciation itself, and was apparent throughout the program, each projected administrative measure was carried through to its ultimate conclusion despite official knowledge that in practice it was not achieving the results which had been planned

¹¹In this connection some of the background must be borne in mind: after it had been announced that persons of Japanese ancestry need only evacuate the coastal strip and many had moved to the interior of California, they were again evacuated and incarcerated; after those in one locality had been ordered to leave but told they could go to locations of their own choosing, they were subjected to detention; and all found themselves under armed guard in detention after being told to report for evacuation.

¹²WRA, Semi-Annual Report, January 1 to June 30, 1943, pp. 11-14.

on paper. In addition to those segregated on these bases, the Tule Lake population included the 600 men discharged from the Army [R. 222], a group of about 6000 persons in Tule Lake who preferred to remain there in preference to again being transported to a substantially similar camp [R. 95],¹³ and about 500 persons who were determined on an individual basis to be potentially "disloyal"; even as to the latter, however, the standard was merely whether the individual's release from detention might be deemed a security risk in view of the war emergency.¹⁴ And about one-third of the Tule Lake population consisted of the dependents of segregees, who were permitted to accompany them to Tule Lake [The Evacuated People, p. 169]; thus, the three women appellees, each with three small children, were in Tule Lake by virtue of their alien husbands' respective requests for repatriation to Japan [R. 5, 6, 7, 314, 317].

(d) Conditions at Tule Lake Prior to Renunciation Program.

Even prior to the use of Tule Lake as a segregation center, this particular detention camp suffered from greater mismanagement and more discordant relations between the inmates and the administration officials than the other WRA camps [T & N 72, 40-42, 45]. After the segregation, which was substantially accomplished in the Fall of 1943 and completed by June 1944, intra-camp relations worsened markedly. As a result of the segregation those

¹³Most of these eventually "legitimized" their status by applying for repatriation or taking other similar officially sanctioned steps to become 'disloyal' . . . [T & N, 104, n. 48].

¹⁴See Senate Document No. 96, 78th Cong., 1st Sess. (1943): WRA Regulations, dated January 1, 1944, 9 Fed. Reg. 154 (1944): Regulations printed at Appendix, p. IX, to Appellees' Brief, Sec. 110.3.

detainees who had assumed positions of leadership in various centers were concentrated in Tule Lake together with similar leaders of the Tule Lake old inmates [R. 44, 95, 225, 247, 251]. These various leaders contended for dominance and for this purpose played upon and built up the dissatisfactions of the other inmates [R. 97, 126, 227]. There was ample ground for such propaganda by virtue of the living conditions [R. 34, 88] and WRA's failure to carry out its assurances with respect to occupation and housing; and the new inmates, in particular, felt the brunt of the bad conditions at Tule Lake [R. 34, 88, T & N 103-104, 109-110]. The disappointment of their hopes with respect to life in Tule Lake, which were partly responsible for their decisions to go there, together with the favoritism to the old internees shown in the WRA policies [T & N 227-228], contributed to the dichotomy of reaction shown by the New and Old Tuleans, on which appellants comment in their Statement of Facts (App. Br. 11).

In any event, though all the "trouble-makers" from the other camps were concentrated in Tule Lake [R. 225, 247], and though political factionalism was obvious, the WRA took little notice of such intra-center problems. On the one hand, Tule Lake had many more aspects of a prison than the other centers [T & N 228, 237] with consequently greater feeling on the part of the inmates that the WRA officials were jailers and a lesser degree of amicable cooperation with them [R. 219]; on the other hand, while the inmates were closely confined with the "trouble-makers" and had none of the escapes from the ensuing friction which they would have in a normal community [R. 88], there was none of the close supervision of a prison which would have protected them from such influences [R. 225, 255, 126, 140-141].

The events of the martial law stockade period, beginning in the Fall of 1943 and ending at about the time of the passage of the renunciation statute in July 1944, have been noted in appellants' brief. This period of turmoil commenced with the WRA's sudden breach in its negotiations with the detainees employed as farm workers, with respect to safety and other measures, after an accident involving the death of one worker [T & N 128-130, 133-134; R. 39]. After a series of incidents which was thus precipitated, the WRA gave control of the center over to the Army and martial law was instituted in November 1943; this abrupt and drastic change in policy was a particular shock to the residents because it was unannounced and they learned of it only through finding soldiers equipped with tear gas, guns, and tanks in their path when they arose to go to work [R. 40-41, 98]. The most notable feature of martial law was the Army's procedure of imprisoning in a stockade, without hearing, those who were suspected of opposing the policies of the Camp administration; the stockade was continued in effect by the WRA after the termination of Army control, and was in use from November 1943 to June 1944 [R. 255, 296-297]. The fear of imprisonment in the stockade without charge or hearing caused suspicion and fear of anyone who was thought to be sympathetic with the Camp officials and who thus might be a source of a denunciation which would result in such summary imprisonment [T & N 224-225].

After the WRA resumed control of the Center, it attempted to utilize a committee of the detainees to establish greater harmony with the inmates. However, because, *inter alia*, of the WRA's inconsistency in dealing with this committee, as opposed to an anti-administration group [T & N 216-217, 234, 316-317]; because of its fail-

ure to take cognizance of the committee's requests with respect to conditions and its generally arbitrary conduct with respect to camp conditions; and because of the continuance of pick-ups for the stockade, and its failure to release from the stockade moderate leaders who would have cooperated with this committee [R. 226-227], the WRA was unsuccessful in undoing the effects of its other policies upon the detainees and in erasing their antagonism [T & N 187-189, 191-194, 197-201, 203, 216-219; see R. 44-45]. By the end of this period, that is, by June 1944, the anti-administration leaders had come to completely identify their cause with Japan and had become markedly pro-Japanese [R. 225; see T & N 363-370]. Thereafter, and particularly after the failure to apprehend the murderer of one of the major pro-administration leaders, the only organized movement in the camp was that of the Japanese-minded organizations [R. 105-106, 258, 51, 87, 109, 325-326]. These pro-Japanese organizations were by the Summer of 1944 out in the open and used WRA facilities for their meetings (see Appellants' Br. pp. 21-22). The camp administration itself appeared, by the Summer of 1944, to have largely abandoned the policy of facilitating and encouraging an American way of life on the part of the American citizen detainees, and to be primarily concerned with satisfying the pro-Japanese leaders [T & N 237].

(e) Enactment of Renunciation Statute.

The events of this period, in particular the violence in November 1943 and the invocation of martial law, gave renewed impetus to the public clamor that more stringent measures be taken against the evacuees [R. 98-99]. In part because of this clamor, and in part because of the view that the detention program might soon be invali-

dated,¹⁵ and the release of all internees would be undesirable, the Department of Justice, which was now involved in the Tule Lake situation along with the Army and the WRA drafted and secured the enactment of the renunciation statute [R. 98-102]. The conception and purpose of this statute was as follows: the militant anti-administration and pro-Japanese leaders had stated that they had given up any expectations from the United States and that they wished to be treated as Japanese nationals [T & N 226-227, and App. Br. p. 21]. While officials recognized that the sentiments of this group were at least in part the result of the evacuation and detention [R. 99, 126], and while their bravado was not accompanied by any attempt to escape or other effort actually to aid Japan, it was determined by the Attorney General that steps should be taken to insure the detention of this group even if other detainees were released. While the alien members of this group could be interned for the duration of the war by the Attorney General under the alien enemy internment program which he administered, those who were native-born American citizens could not be so interned unless their citizenship was terminated. In view of their expressed desire to give up their status as Americans, it was believed that the device of renunciation could be used to effect such termination [R. 101-102].

The passage of the renunciation statute was announced in the Project newspaper [R. 50], and was applauded by the pro-Japanese leaders. They forthwith applied for renunciation¹⁶ and adopted renunciation by all citizens in the

¹⁵The *Endo* case, which resulted in the partial invalidation of detention by the Supreme Court (*Ex parte Endo*, 323 U. S. 283), was certified to that Court by this Court in June 1944.

¹⁶Such leaders have already been deported to Japan [R. 221]. As to the unfairness of some of the deportations, see R. 301, 302.

camp as a prime objective of their organizations. However, their propaganda was, despite the turbulent period the inmates had undergone, wholly ineffective on the other detainees.

2. THE RENUNCIATIONS.

Except for the events of December 1944, the only renunciants would have been this small pro-Japanese group for whom the statute was passed [T & N 356, 333], and 90% of the total number of renunciations, which were tendered in and after December, would not have occurred. Indeed, the citizens who renounced in and after December 1944, in the period hereinafter termed the mass renunciation period, were not citizens whom the Department of Justice had thought it desirable to incarcerate, but rather were intended, under the policy adopted in December 1944, to be released and resettled [T & N 356].

In December 1944, apparently precipitated by fear of the effect of the *Endo* decision, the policy of the WRA and the Army was suddenly and drastically changed. On December 18, contrary to previous assurance that the Tule Lake camp would be maintained for the duration of the war, and that persons who chose segregation could at least rely on the camp as a duration shelter [R. 136, 90], the War Relocation Authority announced that it would force resettlement by closing the camp within a year. At the same time the Army announced the Japanese-Americans except for individuals to be individually served with exclusion orders, would be allowed to return to the West Coast [T & N 333-335].

These announcements, and the preceding rumors that they would be issued [T & N 317], precipitated an upsurge in the violence on the West Coast against those few

Japanese-Americans who had returned thereto and vociferous threats against any others who might make the attempt to reestablish their residence. The San Francisco Chronicle and the San Francisco Examiner, which were the newspapers most widely read at Tule Lake, carried items that "to allow the Japanese to return during the war . . . would cause riots, turmoil, bloodshed" (San Francisco Chronicle, Dec. 13, 1944) and that their "return . . . is apt to result in 'wholesale bloodshed and violence'" (San Francisco Examiner, Dec. 13, 1944) [T & N 345; see also R. 77, 302, 298 as to the crescendo of threats of race violence]. And the danger of violence was exaggerated, even over and above that which actually existed, in the minds of the detainees in the Tule Lake Camp, because of their tension and uncertainty resulting from their experiences in the Camp, their isolation from normal contact with Caucasians, and the unchecked propaganda of the pro-Japanese element who played on the fears of the rest of the inmates [R. 88, 140, 232-233, 143, 38, T & N 349]. Fear, mounting to panic, which was thus engendered by the announcement of the camp closing was increased by the fact that most detainees had no financial resources with which to reestablish themselves because of their losses in the evacuation and the dwindling during the detention of whatever resources they had been able to salvage [R. 223-224]. And the detainees' optimism with respect to meeting the problems of resettlement was diminished by the experiences they had undergone, particularly the governmental adoption of race discrimination in the evacuation and detention [see R. 223].

The result of the WRA camp closing program and the Department of Justice's renunciation and alien enemy internment programs was that American citizens could de-

fend themselves against being forced to relocate in the face of the then existing circumstances only by renouncing their citizenship. Thus, their need for a place of refuge has been uniformly stated to be the primary reason for most of the renunciations in the mass renunciation period [R. 70, 73, 77, 90, 136-138, 302; T & N 333-339].

Allied to the need to renounce in order to secure a refuge, was the need to renounce in order to hold families together [R. 139, 232, 301, 302; T & N 350]. For, since aliens were subject to internment as well as to repatriation to Japan, and citizens were not, alien parents might well be separated from citizen children, alien husbands from citizens wives, and families in general permanently severed and scattered, unless the citizen members renounced. Further, it was thought that a renunciation might serve as had a request for repatriation; *i. e.*, if one member of a family renounced, all would be permitted to remain in the camp [T & N 339]. Finally, it appeared that all males who did not renounce would be forthwith drafted, and the apprehension of Jim Crow labor battalions persisted [R. 233, 72, 302].

The Department of Justice officials who determined to accept the renunciations from the inmates of the Tule Lake and other camps were well aware of these factors propelling them into the renunciations [T & N 356, R. 136]. Nothing was done to counteract the panic and apprehension, the rumor and conjecture, which prevailed in the camps, particularly Tule Lake [see partial admission of this fact in appellants' answer, R. 21-22]. However, it

is to be conceded that a good part of the panic arose not from rumor or confusion but from the realities of the Government's programs, and could not be dissipated so long as each agency insisted on persisting in its own program [Cf. R. 137, and 231, 249; T & N 356].

There is some dispute among the affiants as to the importance during the mass renunciation period at Tule Lake of threats and violence by the pro-Japanese organizations against the other inmates [R. 118, 126, 127]. But some facts as to these organizations and the violence are uncontroverted. The organizations had come into powerful positions in the Tule Lake community with the assistance of the WRA [R. 325-326]; and they adopted renunciation as a primary objective [T & N 333]. In January 1944, appellants' affiant who later questioned the degree of physical violence used by these organizations to obtain their objective, stated his awareness that they had so employed violence [R. 216]. It is also unquestioned that one opponent of these organizations was murdered in July 1944 and that assaults on such opponents were reported in October and November [R. 58, 60, 228, 80; T & N 319]. None of the assailants was apprehended, nor effective steps taken to deter further assaults [R. 48-49, 255-256, 228, 58-59; T & N 277 ff]. Whether all or any of these assaults were for the purpose of coercing a renunciation, it is undenied that rumor of terrorist gangs and assaults filled the camp [R. 218, 32, 126], that it was generally believed that opponents of these organizations were in danger of attack [R. 61, 218], and that neither the WRA

nor any other agency gave adequate protection against such attacks [R. 255].

Aside from actual physical violence, it is also undenied that these organizations had been for an extended period the only organized voice of public opinion in the camp, and that they attempted to create an atmosphere of censure and disapproval of non-renunciants [see T & N 354, R. 326]. They engaged in open demonstrations of militant strength, and only a few persons of unusual physical courage openly expressed opposition to them [R. 257]. When the WRA announcement of the closing of the Camp made it necessary for the residents to consider the possibility of renunciation, the organizations increased their drills and displays [R. 109, 119]; and their militancy was virtually unchecked during the most of the period when Department of Justice officials were at the Camp receiving renunciation declarations [T & N 341, R. 326, 87].¹⁷ During the mass renunciation period, their "pressure upon the general population involved intensification of nationalistic activities, coercive and terroristic tactics directed against dissenters, and extensive propaganda" [T & N 341].

Finally, in view of the numerous shifts of administration policy, including shifts with respect to the effect of

¹⁷The Department unwittingly abetted them in their boasts that they had special access to the Government agencies, by giving them priority in removing them to places of internment, a move which was deemed by the other residents, who were desperate for a refuge, a reward rather than a punishment [T & N 341-342].

statements by the detainees themselves such as those in regard to segregation, registration and expatriation [see R. 136], there was a tendency to believe that the renunciations likewise might not commit them irrevocably [R. 90, 192, 249, 291-292]. In any event, in the panic and hysteria prevailing in the Tule Lake Camp [R. 79, 89, 126] renunciation was regarded as a necessity in order to solve pressing problems of personal safety and family security.

All four appellees renounced during the mass renunciation period [R. 4, 5, 6, 7], and three were in the Tule Lake Camp. Each of these three was an American-born woman with three small children and each was married to a Japanese alien. Each was in the Tule Lake Camp by reason of her husband's request for repatriation, and her decision to accompany her husband to the segregation camp. The fourth appellee, Inouye, was a boy of 15 when he was evacuated and was just over 18 when he renounced during the mass renunciation period. His parents were both aliens, but did not apply for repatriation until this period and hence Inouye and his parents had not been segregated to Tule Lake. Soon after release from detention he volunteered for service in the United States Army and is now serving therein [R. 4, 333].

SUMMARY OF ARGUMENT.

The renunciations herein are invalid because made while the renunciants were in detention, which, with its preceding and concomitant circumstances, establishes a lack of free choice as a matter of law. At the very least it should be held that renunciations other than those made directly after passage of the renunciation statute by the defiant group at whom the statute was aimed, are invalid because (1) the statute, read in the light of its statutory purpose, did not authorize the Attorney General to terminate the citizenship of such other renunciants; and (2) because the circumstances under which such later mass renunciations were made establish the lack of free choice of the renunciants as a matter of law. If both these rules are rejected, appellees have established that they individually were coerced by the circumstances prevailing during the mass renunciation period and that their renunciations were therefore involuntary. The findings by both lower courts to the latter effect not being clearly erroneous, the judgments will be affirmed by this Court.

The District Court in case No. 11839 had jurisdiction under 8 U. S. C. 903 because the facts were proved that appellants denied appellees' rights as nationals (1) by the admission of these facts by appellants in their answer and (2) because the illegal acceptance by the Attorney General of the renunciations resulting in loss of citizenship is sufficient. The finding by the lower court in case No. 11839 that Inouye renounced as a result of undue influence and parental coercion is amply supported by the evidence and not being clearly erroneous will be affirmed by this Court. And finally, a minor under the age of 21 has no capacity to renounce under 8 U. S. C. 801(i).

ARGUMENT.

I.

The Lower Courts' Determination That the Appellees' Declarations of Renunciation Were Involuntary and That the Termination of Their Citizenship Was Therefore Invalid, Should Be Affirmed (Appellants' Points II and IV).

A.

The Applicable Principles of Law in Determining Validity of Renunciations.

The invalidation by the lower courts of appellees' renunciations, and that by another district court in this Circuit^{17a} of the renunciations of other American citizens of Japanese ancestry who were similarly situated, rests basically on the ground that declarations of renunciation made under the circumstances to which such citizens were at the time of renunciation and had theretofore been subject, were not the result of a free, intelligent, and voluntary choice, and were therefore invalid under the renunciation statute. In these decisions the lower courts have taken the same approach to the statute as that of the Court of Appeals for the Third Circuit, with respect to another section thereof, in the case of *Doreau v. Marshall* (not reported, decided August 23, 1948). In that case the Court of Appeals, considering the validity of a renunciation made under abnormal wartime circumstances, followed the Supreme Court's opinion that an act of expatriation was effective only if voluntary,¹⁸ and held that

^{17a}*Abo v. Clark*, 77 Fed. Supp. 806 (D. C. N. D. Cal. 1948).

¹⁸*Perkins v. Elg*, 307 U. S. 325, 334: "Expatriation is the voluntary renunciation or abandonment of nationality and allegiance."

the pressure of such circumstances as alleged by *Doreau* was to be deemed “duress” and a renunciation made thereunder invalid.¹⁹

That case is noteworthy as an instance of judicial protection against the permanent loss of citizenship where the choice to renounce has not been based on a reasoned appraisal of normal conditions, but has instead been made under the pressure of wartime emergency. There, as here, the question before the Court was: of what influences must the citizen be free in order to have the free choice contemplated by the statute? But here the analogy between that case and the instant one stops: for the circumstances in the case at bar are incomparably more compelling to the decision that the renunciations were involuntary and that it would be unfair and unlawful for the Government to take advantage of them. For here not only were the renunciations made under the stress and pressure of temporary and highly abnormal conditions but, further, this Government was itself largely responsible for many of such stresses and pressures and, even further, the major influence was one which is contrary to the very spirit of the Constitution: racial discrimination.

Instead of considering the effect of the influences and pressures, and in particular the racial discrimination, of which the record gives uncontroverted and incontrovertible proof, the appellants continue to support the position

¹⁹See District Court cases likewise holding that expatriation can only be accomplished by a voluntary act, and invalidating “involuntary” renunciations made during World War II: *In the Matter of Andrew Gogal*, 75 Fed. Supp. 268 (W. D. Pa., 1947); *Schioler v. United States*, 75 Fed. Supp. 353 (N. D. E. D. Ill., 1948). Cf. *United States ex rel Fracassi v. Karnuth*, 19 Fed. Supp. 581 (W. D. N. Y., 1937).

taken from the inception of the renunciation program by officials of the Department of Justice; that is, while they apparently concede that an involuntary renunciation is invalid, they will not take cognizance of any circumstances affecting the free choice of the renunciants other than the renunciants' fear of immediate physical injury at the hands of other inmates of the detention camp [R. 114, 115, 130-131; App. Br. pp. 42-43, 55-57].

This position on duress is not supported by the *Doreau* and the District Court cases relating to the instant statute, nor, we believe, by any other cases or doctrines. For

“‘Conduct under duress involves a choice’; *Union Pac. R. Co. v. Public Service Commission*, 248 U. S. 67, 70, and conduct devoid of physical pressure but not leaving a free exercise of choice is the product of duress as much so as choice reflecting physical constraint.” (Justice Frankfurter concurring in *Haley v. Ohio*, 332 U. S. 596, 606.)

The appellants' approach to the question of free choice seems to be premised on its concept of contract law, which is the major basis for all its arguments; while appellants' apparent view of duress in the law of contracts seems to us outmoded and clearly erroneous, we shall not expatiate on this point because we believe that this aspect of the law of contracts, as well as all other aspects, are wholly and completely inapplicable to the case at bar. The appellants, seemingly, have become entangled in their attempt to apply contract law because under the renunciation program the divestment of citizenship by the Government, through the Attorney General, was predicated on a statement by the individual divested. But an analysis of the legal questions before this Court on the basis of

contract law seems naive in view of the large body of public law relating to the determination of whether a relinquishment of a right is to be deemed "voluntary" and valid. In every such case,—whether the question be the validity of the relinquishment of the right to counsel or to a jury, or the validity of a confession or of a plea of guilty,—the courts protect the individual from the consequences of his own statements as against "overzealous" officials who have acted on the basis thereof.²⁰ It would seem clear that this body of law, relating to governmental action, is apposite in the determination of the instant case, rather than private contract law which deals with an exchange of consideration between two private parties or with the Government acting in its private and proprietary capacity.²¹

²⁰"Experience has counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic." *McNabb v. United States*, 318 U. S. 332, 343. See also *Von Moltke v. Gillies*, 332 U. S. 708, 722; *Trupiano v. United States*, 332 U. S. 841. The Courts perform a similar protective function in every case where it is decided to reverse a conviction because of the method by which evidence was obtained, as by an entrapment (see *Sorrells v. United States*, 287 U. S. 435; *Morei v. United States*, 127 F. 2d 827, 833 (C. C. A. 6th, 1942); *Weathers v. United States*, 126 F. 2d 118, 119 (C. A. 5th, 1942)), or by an invalid search and seizure. (See *McDonald v. United States*, No. 36, October Term 1948, decided December 13, 1948, and cases there cited.) In all such cases there exists the requisite basis of evidence upon which the law prescribes that action against the individual is to be taken, but the courts determine that because of the circumstances under which the evidence was obtained, such action cannot be permitted to follow.

²¹This view is implicit in Judge Cavanah's opinion [R. 336-339] and is made explicit by Judge Goodman in the *Abo* case in his rejection of the Government's position and his citation of *McNabb v. United States*, 318 U. S. 32, a confession case.

B.

Invalidity of All Renunciations Made in Detention.

While we shall give further attention below to the details of appellants' argument, on the view we urge as our primary position it is not necessary for us to come to a consideration of most of them. For it is our view, on the basis of the relinquishment of rights cases, that any renunciation made by an American citizen of Japanese ancestry while in detention, with the possible exception of those renunciants already deported to Japan, is invalid. We submit that such a depreciation and obliteration of the value of citizenship as had been experienced by every citizen in detention was a "subverting factor"²² without more, which had the effect of preventing an intelligent and reasonable appraisal of citizenship and its renunciation. The situation is highly analogous to that in which waivers of the right to counsel, and of the right to trial and against self-incrimination by a guilty plea, have been held invalid, most of which are premised fundamentally on the waiver's inability for one or another reason to fully appreciate the value of the right waived.²³ Of particular interest is the recent case of *Von Moltke v. Gillies*, 332 U. S. 708; there four justices, holding that the waiver

²²See *Von Moltke v. Gillies*, separate opinion of Justice Frankfurter, 332 U. S. 708, 727.

²³As to waiver of the right to counsel, compare *Adams v. United States ex rel McCann*, 317 U. S. 269, 279; *Johnson v. Zerbst*, 304 U. S. 458, 464; *Glasser v. United States*, 315 U. S. 60, 71; as to invalidity of a plea of guilty, see *Uveges v. Commonwealth of Pennsylvania*, No. 75, October Term 1948, decided December 13, 1948, where the defendant's failure to appreciate the value of the contrary plea was in part due to the Court's conduct; *Townsend v. Burke*, 334 U. S. 736; *DeMeerleer v. Michigan*, 329 U. S. 663; *Williams v. Kaiser*, 323 U. S. 471, 475.

of counsel at the trial was invalid, pointed out Von Moltke's unawareness of the benefit that counsel could render her and further pointed out that the behavior of the court itself at the arraignment with respect to counsel "might be enough in itself to convince one like petitioner . . . that a waiver of this right to counsel was no great loss . . ." (at p. 723). Two justices in a separate opinion held that if Von Moltke's plea of guilty was based on honest but erroneous advice as to the value of the contrary plea, her plea of guilty was invalid. And in *Haley v. Ohio*, 332 U. S. 596, the Court held a confession invalid, stating *inter alia* that it could not assume under the circumstances there shown that the confessor fully appreciated his constitutional rights.²⁴

A brief recapitulation of the evacuation and detention will show the overwhelming nature of the influences affecting the capacity of each and every citizen in detention to appraise the value of American citizenship. The severity of deportation has been emphasized by this and other Courts;²⁵ accordingly, it is to be borne in mind that all citizens in detention had been expelled from their homes in a measure tantamount to deportation, and that the impact of this step was accentuated by the fact that the individual was precipitously uprooted with no information as to his future or destination (Statement of Facts, *supra*, p. 6).

²⁴This case, as most of the confession cases, also involved the element of the individual's making the confession as an expedient to avoid immediate threats and dangers. These cases are discussed *infra*, p. 47.

²⁵*Carmichael v. Delaney*, 170 F. 2d 239 (C. C. A. 9th, 1948); *Fong Haw Tan v. Phelan*, 333 U. S. 6, 10; *Delgadillo v. Carmichael*, 332 U. S. 388, 391; *Bridges v. Wixon*, 326 U. S. 135, 154; *Ng Fung Ho v. White*, 259 U. S. 276, 284.

And the shock was even greater because this deportation was not, as in the usual case, the foreseeable result of any act on the part of the individual but was instead a Governmental adoption of racial discrimination against which the evacuees had been lead to believe they had Government support. These citizens were then herded into "barbed wire enclosures, guarded by armed soldiers, under conditions of great oppression and humiliation"²⁶ where they were, though not detained because of any culpability, guarded and treated as prisoners.²⁷ No distinction was made in these unprecedented racial measures on the basis of citizenship, and in view of the governmental obliteration of the distinction between alienage and citizenship for this racial group and the total lack of value of citizenship for persons of this race, General DeWitt's widely quoted statement that "once a Jap, always a Jap"²⁸ was merely an articulation of a premise already unmistakably demonstrated by the Government's policy.

The evacuation, and the curfew which preceded it, while upheld as constitutional, were tolerated by the Supreme Court only on the basis that "direst emergency" and "apprehension of gravest imminent danger to the public safety"²⁹ permitted these unprecedented instances of the "odious" practice³⁰ of treating Americans in racial groups. But these citizens were then forced into racial detention for no more compelling reason than that otherwise race

²⁶Chief Judge Denman concurring, in *Takeguma v. United States*, 156 F. 2d 437, 442 (C. A. 9th, 1946).

²⁷T & N 23-32.

²⁸R. 222; T & N 20.

²⁹*Korematsu v. United States*, 323 U. S. 214, 216.

³⁰*Hirabayashi v. United States*, 320 U. S. 81, 100.

prejudice against them might have caused "some untoward incident."³¹ The consequences to democratic processes of such governmental subservience to threats of violence and such governmental adoption of the objective of the lawless is too obvious to require extended discussion; we merely note that restraints upon the rights of those threatened by violence have been judicially condemned even where the restraint has been far less drastic than the detention here involved, and even though the restraint has been defended as a necessary police expedient in place of the alternative of measures against persons attempting violence.³² Here not only did the detention result from a yielding to threats of violence but, in addition, from a compliance with racial prejudice. While we believe that the detention, at least to the extent that it exceeded a merely transient one,³³ was unconstitutional, we do not think it necessary for this Court to pass directly upon this point; for even if the detention might be upheld as an emergency solution to a "pressing public necessity,"³⁴ there can be no doubt that it was even closer to

³¹See contemporaneous statement of General DeWitt's Assistant Chief of Staff, Civil Affairs Division, who recommended detention, in House of Representatives Report No. 1911, Preliminary Report of Committee Investigating National Defense Migration, 77th Cong., 2d Sess. (1942) 6, 8. And see to the same effect *Ex parte Endo*, 323 U. S. 283, 295-296, quoting General DeWitt's Report.

³²See *Hague v. C. I. O.*, 307 U. S. 496, 516; *Thornhill v. Alabama*, 310 U. S. 88; *Johnson v. Sellers*, 163 F. 2d 877 (C. A. 8th, 1947), cert. den. 332 U. S. 851.

³³Compare *Korematsu v. United States*, 323 U. S. 214, 217, and *Ex parte Endo*, 323 U. S. 283.

³⁴See *Korematsu v. United States*, at p. 216.

the borderline of unconstitutionality than the curfew and evacuation, and that it was an even more extraordinary example of unprecedented race discrimination. Thus, it is clear that the evacuation and, even more, the detention, did not fulfill the right which American citizenship normally entails to equal and individual treatment regardless of race. And it seems equally clear that an experience with drastic racial inequality such as was suffered by the detained American citizens, with no prospect or assurance that racial equality would be restored, would tend to affect and overwhelm their viewpoint towards citizenship.³⁵ As a result, it would be highly likely that their renunciation of citizenship would not be made with a full and clear appreciation of the value of American citizenship, of which racial equality is an essential. Accordingly their renunciation would not be a voluntary choice within the legal connotation of that term;³⁶ for we submit that the statute must be held to contemplate a choice to renounce or retain citizenship on the basis of a deliberate and measured appraisal of American citizenship with the citizen's capacity to reason and deliberate unconfused and uninfluenced by gross and extraordinary racial discrimination.

³⁵"It was because the United States first cruelly wronged us by an illegal if not criminal imprisonment that their renunciation came." Chief Judge Denman, concurring, in *Takeguma v. United States*, *loc. cit. supra*, note 26.

The factor of detention was also stressed in the instant case by Judge Cavanah [R. 332] and in the *Abo* case by Judge Goodman (77 Fed. Supp. at 810).

³⁶See cases cited *supra*, notes 18 and 19,

1. INAPPROPRIATENESS OF INDIVIDUAL PROOF.

The Government has urged both in this and the *Abo* case that each individual renunciant must be put to his proof.³⁷ But if, as we urge, a renunciation influenced by a lack of a clear appreciation of citizenship due to the gross racial discrimination, cannot be deemed reasoned, free, and voluntary, then we believe the renunciant's case is established as a matter of law by the fact that he was in detention, and there is indeed no rebutting proof for the Government to submit. For when it is established that the renunciant was in detention and thus that he was subject to the abnormal and subverting influence of the racial discriminations above discussed, the most that the Government could possibly show would be that the individual's life history and activities were such that he *might* have renounced his citizenship regardless of this influence. But such proof is irrelevant. For it is clear, under analogous decisions on the voluntary nature of a relinquishment of rights, that once the relinquishment is shown to have been made under circumstances which should not be permitted to influence it, the Court does not consider whether in fact the relinquishment was so influenced, or might have

³⁷Though Judge Goodman did not accede to this argument, he adopted the theory of individual presentation to the extent that he afforded the Government the opportunity of introducing proof to rebut the presumption of lack of free choice which he deemed to be established by the showing of the general circumstances under which the mass renunciations occurred. It is not at all clear, however, what is, in Judge Goodman's opinion, the ultimate fact to be proved. However, if this Court determines, as we urge, that the fact that the renunciant was in detention is sufficient to invalidate the renunciation, these additional circumstances need not be considered.

been made regardless of such influence.³⁸ Thus, in summing up the Supreme Court's doctrine as to when a confession (by which a defendant relinquishes the right against self-incrimination) is not to be deemed the product of a free and reasoned choice, Mr. Justice Reed pointed out:

"A court never knows whether a confession is or is not voluntary. It bars confessions on uncontroverted proof of facts which as a matter of law are deemed so coercive as to be likely to produce an involuntary confession."³⁹

So, too, the Court had said earlier:

"(A) situation such as that here shown by contradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom"

and refused to consider whether the defendant's choice had in fact been affected by the situation.⁴⁰ The doctrine

³⁸Compare *Schioler v. United States*, cited *supra*, note 19, relating to the instant statute, where the Court ignored the question whether the renunciant might have desired to give up American citizenship regardless of the special pressures which were held to establish her lack of free choice; a tendency to so desire would seem a particularly conspicuous possibility since the renunciant's husband was of Danish ancestry, both he and the renunciant had resided in Denmark for ten years before the renunciation, and the renunciant did not attempt to have it voided until after her husband's death four years later.

³⁹Justice Reed, dissenting, in *Upshaw v. United States*, No. 98, October Term 1948, decided December 13, 1948.

⁴⁰*Ashcraft v. Tennessee*, 322 U. S. 143, 154; and see analysis of the majority opinion in dissent of Justice Jackson. And in *Lyons v. Oklahoma*, 322 U. S. 596, while the Court found that the situation there was not inherently coercive, it again affirmed that a confession would be deemed invalid as a matter of law "when conceded facts exist which are irreconcilable with . . . mental freedom" (at p. 602). Accord: *Malinski v. New York*, 324 U. S. 401, 404.

is likewise well illustrated in the recent case of *Haley v. Ohio*, 332 U. S. 596.⁴¹

The seeming rationale of the Supreme Court's doctrine that a confession made under circumstances likely to subvert a free choice is to be deemed invalid as a matter of law, is fully applicable to the case at bar and dictates that the doctrine should be here applied. Since history cannot be reversed, and the relinquishment of rights, whether by confession or as in the instant case by renunciation, was in fact made under circumstances likely to subvert a free choice, it is clear that *no* proof can eliminate the very real possibility that it was the subverting circumstances which caused the relinquishment; and the Governments taking advantage of a relinquishment influenced by such circumstances is deemed so unfair and unjust that the courts utilize a doctrine which will prevent the possibility of this result. Furthermore, an attempt to estimate whether or not the relinquishment would have been made if the subverting circumstances had not existed would necessitate an appraisal of a subjective state of mind with a weighing of imponderables which no court or jury is

⁴¹There the Court held the confession invalid on the ground that the "undisputed evidence *suggests* force was used to secure the confession" (*italics added*), and was not concerned with whether the confession *might* have been made, in the absence of the disapproved circumstances, with whether such circumstances were the chief cause for the confession, or any other similar questions. If circumstances which are deemed highly likely to interfere with a free choice are shown, the confession is *per se* invalid; further, the individual is protected against any possibility of damage by reason of having made a statement under these circumstances in that his conviction is reversed regardless of the fact that there is sufficient evidence other than the confession to support the conviction. The Court "will not permit the conviction though there might have been sufficient other evidence for submission to the jury." *Haley v. Ohio*, at p. 599; *Lee v. Mississippi*, 332 U. S. 742.

equipped to make; thus, unless the rule of the invalidity of the relinquishment as a matter of law were adopted, not only would a relinquishment be held valid despite the ever-present possibility that it was influenced by the subverting circumstances, but also the estimate, on the basis of probabilities, that it was not so influenced would be particularly open to error. Thus, in the case of the renunciants, despite whatever evidence the Government could submit as to indications of a renunciant's attachment to Japan, the likelihood would remain, regardless of individual factors, that the renunciation would not have occurred but for the influence of the extraordinary racial discrimination on the citizen's view as to the value of his citizenship and of his future in the United States;⁴² and any determination that this influence was insubstantial would be based on a highly problematical evaluation of the degree to which such discrimination influenced that particular citizen's reactions.

⁴²Not only would this likelihood remain in every case, but, indeed, there would seemingly be no case in which even a probability could be established that the renunciation would have occurred absent the discrimination. For it is to be borne in mind that there was no individual who had committed any act of disloyalty before the program of racial discrimination commenced, and, indeed that none attempted to commit any act detrimental to the United States thereafter. The renunciants' behavior after the evacuation and detention is not, of course, persuasive one way or the other as to whether such behavior, or the renunciations themselves were influenced by the evacuation and detention. As to the effect of governmental race discrimination on the "disloyalty" of a leading "disloyal," see "Life History of a Disloyal," T & N, pp. 363-370, especially 369. It is to be noted in passing that the conduct which various government agencies classified as "disloyal" was not "disloyal" except by the standards of these agencies, which were forced to establish some standard of disloyalty in part by public clamor (*supra*, p. 7); that such conduct was not unlawful, and was not harmful to the war effort of the United States.

The fact that not *all* citizens who had experienced evacuation and detention renounced does not at all affect the force of our argument; for it is our contention that while the determination to renounce did not uniformly result from this experience, that it is highly likely, and no proof can eliminate the probability, that the gross racial discrimination and deprivation of the evacuation and detention was a decisive influence upon all those who did renounce.⁴³

We submit that it is incumbent upon this court to hold all renunciations in racial detention involuntary as a matter of law and thus prevent the possibility of the enforcement of a renunciation so influenced.

For it is to be borne in mind that even the evacuation was countenanced only because of "direst emergency"⁴⁴ and the prolonged detention, if constitutional at all, was indubitably justifiable only as a crisis measure. Thus, to

⁴³Whether or not the discriminatory experience resulted in a determination to renounce, depended, of course, on pre-disposing individual factors, as in every case of an involuntary relinquishment. Thus, for example, in *Ashcraft v. Tennessee*, cited *supra*, note 40, if Ashcraft's reactions were to be minutely analyzed, his confession was not only due to the prolonged questioning, but also to his physical and mental constitution, at the time of the questioning; however, the questioning was held inherently coercive and the confession coerced as a matter of law because of the likelihood that such questioning would overcome any individual's free choice, regardless of his individual constitution.

As a factual matter we deny that the pre-disposing individual factor in the case of the renunciants was attachment to Japan; rather it may well have been the degree of disillusionment arising from the discrimination because of prior hope for life in this country. See again "Life History of a 'Disloyal,'" T & N, p. 369.

⁴⁴*Korematsu v. United States*, *loc. cit. supra*, note 29.

permit the influence of these measures to be in any way or to any extent perpetuated is clearly contrary to the spirit of the Constitution and of the Supreme Court's rulings, and to the public policy of the United States.⁴⁵ For freedom from racial discrimination is to be scrupulously and specially safeguarded from infringement, whether by direct and obvious means or indirect and veiled.⁴⁶ Further, the use of a rule of law that will prevent the possible validation of a renunciation influenced by these measures of racial discrimination is dictated by a consideration of the status of the right here renounced. For the right to citizenship is specifically guaranteed on a basis of equality to all persons born in the United States by the Fourteenth Amendment. Moreover, since the right of a racial group is here at issue, the very purpose of the guarantee,⁴⁷ which was to prevent racial inequality with respect to citizenship, is at stake. Even without considering the influence of racial discrimination upon the renunciants, extreme caution with respect to validating the renunciations would be indicated. For it is to be presumed from the mere fact that only persons of the Japanese race have been adversely affected by the renunciation program, that an unlawful discrimination has occurred. In an accumulating volume of opinion the Supreme Court has held that a mere showing of a measure's impact only

⁴⁵*Bob-Lo v. Michigan*, 333 U. S. 28; *Shelley v. Kraemer*, 334 U. S. 1.

⁴⁶*Oyama v. State of California*, 332 U. S. 633, 636; *Patton v. Mississippi*, 332 U. S. 463.

⁴⁷*Hague v. C. I. O.*, 307 U. S. 496, 509-510; *Rice v. Elmore*, 165 F. 2d 387 (C. A. 4th, 1947).

upon, or very largely upon, one racial group creates a presumption of an unconstitutional racial discrimination.⁴⁸

In view of the important public policy considerations thus involved in the renunciations in detention, the invalidation of all such renunciations as a matter of law is dictated by yet another principle found in the confessions cases. For the situation is highly analogous to that in which the Federal Courts have held that a confession made while being illegally detained by Federal officers is invalid as a matter of law; the theory of these cases is that the courts should express disapproval of the conditions under which the confession was made and should prevent Federal officers from benefiting from "the fruit of their wrongdoing."⁴⁹ While the influence here—racial discrimination—was not of course applied deliberately for the purpose of bringing about the renunciations, we believe it is of as great importance as in the confessions cases, in view of the important public policy here involved, for this Court to disapprove of the use of renunciations made during the detention here involved and hold them invalid as a matter of law.

Finally, the rule of invalidity as a matter of law renunciations in racial detention must be adopted because the statute "touches the sensitive area of rights specifically

⁴⁸*Patton v. Mississippi*, 332 U. S. 463; *Korematsu v. United States*, 323 U. S. at p. 216; *Hill v. Texas*, 316 U. S. 400; *Norris v. Alabama*, 294 U. S. 587; compare *Yick Wo v. Hopkins*, 118 U. S. 356. And see Justices Murphy and Rutledge concurring in *Oyama v. California*, 332 U. S. at 661, and noting that the object of the statute had been discriminatory because 73 of the 79 actions taken thereunder had been against Japanese.

⁴⁹*Upshaw v. United States*, No. 98, October Term 1948, decided December 13, 1948; reasserting the doctrine of *McNabb v. United States*, 318 U. S. 322.

guaranteed by the Constitution” (*Ex parte Endo*, 323 U. S. 283, 299); thus, the customary rule⁵⁰ of construing a statute, if possible, so as to render it constitutional, takes on unusual gravity, and the statute must be construed so as to fully safeguard constitutional principles. And “since the stakes are considerable for the individual,” a construction favorable to the freedom of the individual is to be assumed. *Fong Haw Tan v. Phelan*, 333 U. S. 6. And the construcion we have urged, which gives fullest expression to the principle of racial equality implements the principle of interpreting statutes in harmony with the “general spirit of our institutions.”⁵¹

C.

Invalidity of Renunciations During Mass Renunciation Period.

1. STATUTORY POWER RESTRICTED TO DEFIANT GROUP.

Assuming *arguendo* that this Court rejects the position we have urged in Section “B” that all renunciations by American citizens of Japanese ancestry while in detention were involuntary and invalid, we argue that at the least all renunciations but those made directly after the passage of the statute, that is, from July to October, 1944, are invalid. At the outset it would appear that the subsequent renunciations cannot be deemed authorized by the statute; for it was enacted for the purpose of terminating the citizenship of, and then interning as enemy aliens, the small group of citizens who had prior to its passage dis-

⁵⁰See *United States v. Congress of Industrial Organizations*, 335 U. S. 106, 121, citing other cases.

⁵¹*Potash v. District Director of Immigration*, 169 F. 2d 747 (C. C. A. 2d, 1948).

played an attitude of bravado and rejection of American citizenship, and who forthwith upon enactment applied for renunciation; most if not all such renunciants have already been deported [R. 221].

Further, it is clear that the Congressional intent did not contemplate termination of citizenship on the basis of renunciations made under the circumstances which reached their climax during the mass renunciation period, that is, the period subsequent to October, 1944, after the renunciations of the defiant group at whom the statute was directed. It is established doctrine that a statute must be read in the light of its purpose; here the purpose was so clearly to authorize the Attorney General to terminate the citizenship only of the small group heretofore mentioned, that the statute must be construed to the same effect as if it had so restricted the Attorney General's authority in explicit language.⁵² Particularly is this limited construction to be here adopted because a limitation is in any event to be favored where an expanded construction would permit of interference with important personal rights (see cases cited *supra*, p. 41). Thus, the statute did not authorize the termination of the citizenship of the mass of renunciants who were in an entirely different category from the group whom the statute was intended to cover.

⁵²See *United States v. Congress of Industrial Organizations*, 335 U. S. 106, 112, holding that an indictment did not state an offense within the terms of the statute there involved because such terms had to be restricted to the Congressional purpose, as shown by the legislative history; see also to the same effect, *Mitchell v. Cohen*, 332 U. S. 754.

2. CIRCUMSTANCES SUBVERTING FREE CHOICE.

In addition, the circumstances under which the later renunciations were made, added to the influence of the detention already discussed, unquestionably must be deemed to have overcome the renunciants' voluntary choice which the statute must have contemplated as a prerequisite to a valid renunciation.

The circumstance which exerted the greatest influence during the mass renunciation period was concededly these hapless citizens' need for a place of refuge. This need became a crucial one as a result of the rumors, and then the definite announcement, that the WRA camps would be closed within a year. To appreciate the extent to which the evacuated citizens felt compelled to secure refuge from the Government, it is to be recalled that even at the commencement of the evacuation program the whole of the first group evacuated, who were given their choice of destination, chose a Government camp. And fear of relocation had played a salient part in all stages of the evacuation and detention program. But by the time of the announcement of closing the camps, the circumstances creating a need for a place of refuge had mounted to a climax. For the continued detention of these citizens had increased the hostility towards them on the West Coast by reinforcing the view of those who had long sought their ouster and who had welcomed the evacuation, that their expulsion was permanent; further, the prolonged detention had created a deepening opposition to their return on the part of those who had succeeded to their homes, businesses, and economic interests. Those few citizens who had returned encountered violence in the form of assaults and attempts to burn their homes; when, even before the

actual announcement on December 19th that the citizens of Japanese ancestry would be allowed to return en masse, rumors to this effect commenced, violence increased and threats reached a new height. (See Statement of Facts, *supra*, pp. 18-19).

In addition to the fear of violence, the other factors impelling the evacuees throughout the program to seek refuge had also become intensified by the time of the announcement of December 19th. These factors were, chiefly, the dwindling of whatever financial resources had not been lost in the evacuation; these citizens' long isolation from normal living and from the Caucasian community; their unrelieved discouragement and disillusionment as a result of the Government's continuance of its program of racial discrimination; and that continued evidence of the Government's failure to give adequate protection against violence, compensation for material losses, or other assistance to these citizens in reestablishing themselves in the community. To fully appreciate the state of despair and panic engendered by the WRA announcement in the Tule Lake Camp, it is also to be borne in mind that the citizens therein had accustomed themselves for over two years to reliance on assurances that they would not be forced to leave the camp for the duration of the war while race prejudice was at its height (*Id.*, *supra*, p. 18).

In the face of the extreme hopelessness and apprehension felt by these citizens with respect to being expelled from their places of refuge, the Government offered them neither protection nor refuge except through renunciation of citizenship and internment as aliens or, along therewith, deportation to Japan (*Id.*, *supra*, p. 17). Thus, in the terminal phase of the racial discrimination program, the Government went even further in its depreciation of

the value of citizenship for persons of the Japanese race than it had in the previous phases of the program; in the renunciation program it not only accorded no greater value to citizenship than to alienage, but in fact, from the standpoint of meeting the citizens' need for refuge, accorded superior value to alienage.

Not only were citizens influenced and driven to renounce by the pressure of the need for refuge, but they were similarly driven, in so far as they belonged to families with alien members, by the fact that they had to renounce in order to assure keeping their families intact. This concern, which was also an ever-present factor in the evacuation and detention program, likewise reached a new climax because of the announcement respecting return to the West Coast and the closing of the camps (*Id.*, *supra*, p. 18). Another major pressure in the mass renunciation period in the Tule Lake Camp was the intensification of the demonstrations and threats, and attempts to increase hysteria and confusion, by the pro-renunciation organizations, which were permitted, and in fact had been helped, by the Government to assume a dominating place in the Tule Lake community (*Id.*, *supra*, p. 22). Finally, by its abrogation of the program of maintaining the Tule Lake Camp and its demonstration thereby of inconsistency and vacillation to an even greater degree than previously in the program, and by its toleration of violence in and out of the camp, the Government gave intensified grounds during this period for distrust of its intentions with regard to citizens of the Japanese race.

Despite the recognition of the pressure exerted by these circumstances towards renunciation, the Attorney General's representatives pushed on with the renunciation and alien internment program, and the WRA officials pushed

on with the program of closing the camps, with neither agency yielding to the suggestion of the other to cancel its program [R. 136-142, 127-130, 248-250, 266-268, 259-260]. The high degree of bureaucratic fumbling and jealousy, obvious from the record, is of no concern here except that it makes comprehensible what might otherwise seem incredible: that is, that Government officials stood by while the citizens were caught in the trap of these governmental programs and as a result impelled towards renunciation, although the facts as to the impelling pressures were as clear at the time of renunciation as they are uncontroverted today.

3. EFFECT OF CIRCUMSTANCES UPON FREE CHOICE.

We believe it is clear that a renunciation made under these circumstances did not represent a free and reasoned choice as to citizenship. Even more than the evacuation and detention alone (*supra*, Point B), the accumulation of circumstances during the mass renunciation period would be likely to influence and overwhelm the ability to retain an appreciation of American citizenship with its normal prerequisite. For, while the citizen's right to demand protection from him Government is generally an essential prerequisite of citizenship, here the needed protection was to be secured only by renouncing citizenship. A choice to renounce under these circumstances could not be deemed to be made with a clear appreciation of the right relinquished, and thus, was not a free and voluntary choice. (See cases cited *supra*, notes 18 and 19.)

Further, it is to be borne in mind that the circumstances prevailing during the mass renunciation period not only had a negating effect with respect to appreciation of the right relinquished but also exerted affirmative pressures

toward renunciation. In that the need to keep families intact was an influence towards renunciation, the instant case is again analogous to *Von Moltke v. Gillies*, cited *supra*, Note 20, where the Justices stressed, in invalidating a plea of guilty, that one of the defendant's chief concerns in determining whether or not to plead guilty was her husband's job and her child's care (332 U. S. at 717). We believe that the concern with family unity prevailing during the mass renunciation period is as foreign to the considerations which should properly influence a choice to renounce as were Von Moltke's family worries to those circumstances which should properly influence a plea of guilty.

But renunciation was not only expedient from the standpoint of assuring family unity, but also from the standpoint of assuring protection from violence and hardship both in and out of the Camp. Thus the situation was also highly analogous to that found in many of the cases in which confessions have been invalidated, where the confession has been attributable to the human tendency to escape from immediate pressures, dangers and hardship, by sacrificing rights which are not immediately involved. (See Justice Jackson dissenting, in *Ashcraft v. Tennessee*, 322 U. S. at p. 173.) But it is almost supererogatory to say that in order for the confession to be invalidated the peril which the confessor seeks to escape need not be that of an immediate physical blow; the Court is concerned with "unlawful pressures," equally with "force or threats." See *Lyons v. Oklahoma*, 322 U. S. 596, 602. Indeed, because a conflict of evidence with respect to actual physical coercion is usual in confession cases (see *Ashcraft v. Tennessee*, 322 U. S. at pp. 152-158), this element is rarely considered by the Court. In-

stead, the influence invalidating the confession is generally more subtle and pervasive in the sense that it is the atmosphere of apprehension and helplessness which the Court stresses. Thus, in the *Ashcraft* case, the Court invalidated the confession on the basis of the effect on the nerves of the uncontroverted circumstances (at p. 154). And, in *Chambers v. Florida*, 309 U. S. 227, the Court noted that the evidence as to the use of violence was conflicting (at p. 238). But after pointing out the circumstances of the defendants' arrest and confinement which would tend to make them feel hopelessly and helplessly disadvantaged, the Court held the confessions invalid because "the very circumstances surrounding their confinement and questioning . . . were such as to fill petitioners with terror and frightful misgivings" (at p. 239); because they were throughout the proceedings "never . . . wholly removed from the constant observation, influence, custody and control of those whose persistent pressure brought about the . . . confessions" (at p. 235); and because "the haunting fear of mob violence was around them in an atmosphere charged with excitement and public indignation" (at p. 240). See also *Powell v. Alabama*, 287 U. S. 45, 51, where the Court pointed out that a need for special protection of the defendants' right to counsel arose because the "proceedings from beginning to end took place in an atmosphere of tense, hostile and excited public sentiment. During the entire time, the defendants were closely confined or were under military guard." And in *Malinski v. New York*, 324 U. S. 401, the element emphasized by the Court in invalidating the confession was the defendant's feeling of helplessness as against the law-enforcement officials questioning him, arising in large part from the fact that he was isolated except for seeing one friend (at

p. 405). As to the element of isolation, see also the *Von Moltke* case, 332 U. S. at 711, 713, 721; *Powell v. Alabama*, 287 U. S. 45, 71.

Thus, it is clear that in our emphasis upon the fact that a free choice could not exist not only because of the specific pressures towards renunciation but because of the atmosphere at the time of the renunciations of apprehension, bewilderment, and hysteria, we are supported by firmly established legal doctrine. And the crescendo of public hostility which was reached at that time is of extreme importance, not only in that it specifically influenced the citizens towards renunciation as an escape therefrom, but also because of its general effect on the tension, and apprehension, and thus on the ability to reason and appraise of these citizens.⁵³ We submit that a relinquishment of citizenship under the influence of the circumstances prevailing during the mass renunciation period cannot be deemed to be a "reasoned and voluntary choice,"⁵⁴ for there was not "both the capacity to make an understanding choice and an absence of subverting factors so that the choice is clearly free and responsible."⁵⁵

It seems clear that the factors we have stressed must be deemed subverting, for the need to find refuge from racial violence and similar needs could hardly be viewed as appropriate influences upon the choice to retain or renounce citizenship. The influences during the mass re-

⁵³In addition to the excerpts quoted *supra*, as to public hostility, see *Powell v. Alabama*, 287 U. S. at 71; *Von Moltke v. Gillies*, 332 U. S. at 721.

⁵⁴*Lee v. Mississippi*, 332 U. S. 740.

⁵⁵*Von Moltke v. Gillies*, 332 U. S. 708, 729 (separate opinion by Justice Frankfurter.)

nunciation period are somewhat analogous to those deemed to render renunciations invalid in the *Doreau* and *Schioler* cases. In the *Doreau* case (cited *supra*, p. 25), an American citizen, thus renouncing her American citizenship, because she wished to avoid the internment to which she would probably have been subjected if she had remained an American citizen; her desire to avoid internment was accentuated by her pregnancy and illness. The Court held that a determination to renounce citizenship impelled by reasons such as those alleged by *Doreau* must be deemed to have been made under "duress" and the act of renunciation to be "involuntary" and invalid. Similarly, a relinquishment of United States citizenship for reasons of wartime expediency was held to be involuntary and invalid in *Schioler v. United States*, 75 Fed. Supp. 353 (N. D. E. D. Ill., 1948), which was cited with approval in the *Doreau* case. There the petitioner was a woman American citizen who was in Denmark with her husband and children during the period of German control; she renounced her American citizenship in favor of Danish citizenship because she believed this change of citizenship would afford her some protection against the Germans. While the only showing of any specific threat of danger to her from the Germans was the allegation that "the Germans were after students and their two children were of student age" (75 Fed. Supp. at 355), the court held that "everything done by petitioner was done under the compulsion of fear for the safety of herself, her husband and their children, and in the interest of preserving their very lives," and that her renunciation was not therefore "the free and voluntary renunciation . . . which . . . the statute contemplates" (75 Fed. Supp. at p. 355). However, as indicated above (*supra*, p. 46), we believe

the instant case an *a fortiori* case in the light of *Doreau* and *Schioler*, for the pressures here were as, or more, crucial, and further were largely due to this Government's own conduct and were basically referrable to its program of racial discrimination.

4. INVALIDITY AS A MATTER OF LAW OF ALL RENUNCIATIONS DURING MASS RENUNCIATION PERIOD.

Regarding it as incontrovertible that a renunciation which was substantially influenced by the circumstances above discussed was involuntary and invalid, we shall now consider the point that all renunciations made under such circumstances—that is, all renunciations during the mass renunciation period—should be held invalid as a matter of law.

The strong probability that all of the citizens renouncing during the mass renunciation period were influenced to do so by some or all of these subverting circumstances seems to us to be incontrovertible. For there circumstances were “inherently coercive”⁵⁶ in the sense that they were of such impelling force towards renunciation that any renunciant is highly likely to have been influenced thereby. Further, all authorities and affiants agree that these circumstances influenced the renunciants; for while appellants maintain that some citizens were predisposed to renounce because of their intention of going to Japan (discussed in greater detail, *infra*, p. 60), even as to them, it is not denied that the need for refuge arising from the camp-closing announcement precipitated their decision to renounce [see R. 136-7]. Finally, we believe that the

⁵⁶See *Ashcraft v. Tennessee*, 322 U. S. at 154.

inference of "*post hoc, propter hoc*" here irrefutably establishes that the coercive circumstances of the mass renunciation period influenced the mass renunciants. For these citizens did not resort to renunciation during the four or five month interval between the enactment of the statute and this period. And the only changes of circumstances which occurred at the time that these thousands of citizens took the step of renunciation were those that have been here outlined and that, as we have shown, cannot be permitted to influence the choice to retain or renounce citizenship.

The appellants' position on the influence of these circumstances is not comprehensible; appellants do not deny the existence of the subverting circumstances, as indeed they cannot in view of the record, yet they apparently would have the Court discount the effectiveness of such influences on the basis of various statistical deductions. All of appellants' propositions are unconvincing, and certainly lack sufficient persuasiveness to contradict the fact, established both by evidence and inference, that the coercive circumstances were decisively influential.

As to the fact that only a great majority, and not all of the Tule Lake resident, renounced (App. Br. p. 54), the record indicates some of the individual characteristics which caused individuals to be less influenced than the average by the prevailing circumstances. Some citizens were more defiant with respect to internal pressures because they were themselves of the "strong-arm" type [R. 85-86] and some were in closer and more confidential con-

tact with WRA officials [R. 235, cf. R. 219]. Thus there is no warrant for inferring from the fact that not all citizens were driven to renounce, either that the subverting circumstances did not influence those who did renounce or that the non-renouncing minority possessed some superior intrinsic loyalty to the United States.

Again, the appellants attempt to indicate that the coercive influences were not significant by commenting that a greater per cent of the citizens at Tule Lake who arrived there as a result of segregation renounced than those who had been there all along (App. Br. p. 54). Appellants have omitted to mention various differences in the background of these two groups which would account for a difference in the extent of their reaction to the subverting circumstances and would make these figures entirely explicable. In the first place, the urge for a place of refuge had been a prominent feature of the segregation (Statement of Facts, *supra*, p. 20), and it is not surprising that many of those who had once strongly felt this need should react more keenly than others when it again became a crucial issue. The New Tuleans may also have felt the need for refuge more strongly because they had experienced an additional uprooting as compared to the Old Tuleans and because the latter had been favored in many respects by the WRA camp administration [T & N 108-111]. We do not maintain that these factors are the only explanations of the figures, for a definitive analysis would require a detailed correlation of various data; but we do maintain that nothing can be proved one way or

the other as to the influence of the subverting circumstances by an offhand reference to such percentage data.

As to the influence on the renunciants of violence within the camp, appellants seem to regard very lightly the assaults in October and November, 1944, reported by one of their affiants [R. 58, 60-61, 85-86; *cf.* App. Br. p. 55]. And in considering the Hitomi murder the appellants ignore the fact that renunciation was made a primary aim of the anti-administration groups, which is the obvious reason that this murder was generally deemed by affiants to have been a strong influence towards renunciation [R. 257, 261, 289]. In appellants' attempt to discount the threatening atmosphere in Tule Lake on the basis that there was not a continuous series of such murders and assaults (App. Br. pp. 55-56), the appellants overlook the apprehension created by even one such incident where the assailant is not apprehended and no steps whatsoever are taken to deter or apprehend further such assailants [See R. 267-268, 256]. The appellants' suggestion that the renunciant could have avoided this threatening atmosphere by going to a relocation camp ignores the other pressure to which the renunciants were subjected; *i.e.*, the need to avoid relocation because of the violence and hardships outside the camps.

In sum, nothing appellants have said detracts from the fact that it is highly probable that all renunciations during the mass renunciation period were decisively influenced by the coercive circumstances then prevailing which must be deemed to have been subversive or a free choice.

Thus, the reasoning which supported the conclusion that renunciations made under the influence of detention should be deemed invalid as a matter of law (*supra*, Point IB), even more strongly supports the conclusion that renunciations made under the conglomeration of subverting circumstances existing during the mass renunciation period should be so deemed. If this Court does not establish such invalidity as a matter of law, and if it instead permits any renunciation to be held binding on an individual basis, the Court will be countenancing the use of renunciations which are likely to have been influenced not only by the gross racial discrimination of the evacuation and detention, but also by violent racial hostility, by governmental failure to protect against violence both inside and outside the Camp, by governmental confusion and ineptitude, and by the Government's depreciation of the value of citizenship through its apparent extension of greater protection to aliens than to its own citizens. Not only is there no proof which could eliminate the likelihood that any of the mass renunciants were so influenced, as we pointed out in relation to the influence of detention (*supra*, p. 35), but also the likelihood of error in estimating the substantiality of these influences upon a renunciant is even greater than in the case of detention alone, because of the involvement of additional highly subjective factors. And the shocking unfairness of this Government's exploiting a sacrifice of citizenship to which a citizen was driven by the circumstances of the mass renunciation period, immeasurably increases the importance of judicial disapproval of governmental pursuit of the renunciation program during that period (*Cf.* pp. 39-40, *supra*).

D.

**Invalidity of Appellants' Renunciations Individually
Considered.**

But even if this Court does not adopt either of the rules of law we have urged, and if the renunciations are to be considered on an individual basis, appellees have fully proved their cases. In the first place, there is nothing which appellants have adduced or argued which contradicts the reasonable presumption that appellees were influenced by the coercive circumstances prevailing during the mass renunciation period.⁵⁷ And even without relying on this presumption, it is clear that appellees have presented convincing and uncontradicted evidence that they were so influenced.

Two of the appellees were peculiarly subject to the threatening atmosphere of the Tule Lake Camp because they lived in a block and ward where the most rabid anti-administration leaders lived [R. 5, 6, 315, 317]. All four of the renunciants were peculiarly subject to the pressure for renunciation arising from the need for a place of refuge and the desire for family unity. The three women renunciants were married to alien husbands who were not only subject to, but likely to be, kept in internment. Each

⁵⁷Judge Goodman's conclusion in the *Abo* case was that these circumstances created a rebuttable presumption that the renunciations was involuntary. Such a presumption of fact, as "a process of reasoning from one fact to another" (see *Maggio v. Zeitz*, 333 U. S. 56, 66), is dictated by reason and logic; furthermore, reasonable presumptions favoring the renunciants are to be indulged because, as pointed out *supra*, p. 42, the renunciations affect their basic Constitutional rights. Compare *United States v. Congress of Industrial Organizations*, 335 U. S. 106, 121-122, respecting the shift of the burden of proof as to the validity of a statute when democratic freedoms are affected thereby; and *Von Moltke v. Gillies*, cited *supra* (at note 20), as to the presumption against the waiver of Constitutional rights.

had three young children, and no outside resources or support other than that of their husbands. They and their young children could not be assured of remaining united with the husband and father unless they renounced, and continued their internment. The record is replete with evidence of their concern for their children and for the unity of their families [R. 5, 8, 152, 156, 162, 165, 167, 197, 203, 204, 315, 316, 318-319]. We believe that where, as in the case of the three women appellees, a citizen has been subjected to expulsion from her home on a racial basis and the loss of all material resources, and, in an atmosphere of violence and tension, is confronted with the choice between renouncing citizenship or breaking up her family and braving race violence and destitution with three small children, such a citizen's renunciation is not based on the free and deliberate choice the statute contemplates. The cases of the women-renunciants are, from this standpoint, closely similar to the *Doreau* and *Schioler* cases, discussed *supra*.

As to Inouye, it is clear and uncontroverted that he was influenced to renounce by the fact that he was a minor and an only son, and could continue his internment with his alien parents only by renouncing and that he was pressured to renounce by his parents [R. 4, 180, 184, 185, 188, 192]. We submit that where, as in Inouye's case, a citizen is expelled from his home and community at the age of 15 in a program of racial discrimination and then at the age of 18 is confronted with the choice of returning to that community alone or renouncing his citizenship and maintaining his family ties, such citizen's renunciation is not based on the free choice contemplated by the statute.

In their argument that the renunciations were voluntary, appellants point to the fact that the renunciation proceed-

ings were time-consuming (App. Br. 40). But this obviously is irrelevant to the issue of whether appellees were influenced by the coercive circumstances here in question, since for all of them, the need to renounce in order to obtain refuge and family security, prevailed during the entire period of their renunciations. While the drawn-out procedure might have served its intended purpose of minimizing the type of coercion and mistake of which the Department of Justice was willing to take cognizance, it did not minimize the type which actually existed.

Likewise fallacious is the appellants' emphasis on the statements made at the so-called renunciation hearings. As in any case involving the question of whether a relinquishment of rights is voluntary, the renunciant's statement of reasons therefor must be carefully probed. For the person who has concluded to relinquish a right customarily makes those statements as to motivation which are necessary to accomplish the decision to relinquish, regardless of whether that decision is in fact a product of those motives and of free choice; accordingly his statement of reasons is to be greatly discounted. See for example *Haley v. Ohio*, 332 U. S. at page 601, and *Von Moltke v. Gillies*, 332 U. S. at pages 717, 724, where the Supreme Court accorded no weight to the statements, respectively, that the confession was not made under duress, and that a plea of guilty and a waiver of counsel were understandingly and freely made. Furthermore, appellants' affiant himself describes the conspicuous attempts by renunciants to make whatever statements seemed suitable to accomplish the renunciation [R. 123-4]. A statement of an intention to go to Japan, such as was expressed by these appellees, was a usual feature of the mass renunciation hearings, since it was considered a suitable statement in

order to secure approval of the renunciation; and appellees' statements of such intention in no way renders their cases different from or shows that they were less influenced by the subverting circumstances than, the thousands of other renunciants. And the appellees' hearings themselves demonstrate their attempt to make appropriate statements of motive, whether or not true, as well as the general superficiality of the hearing procedure.⁵⁸ Indeed, we believe the record shows that these hearings were so perfunctory and superficial that they would not even have been sufficient to ascertain the existence of the only type of coercion with which the hearing officers were to be concerned, *i. e.*, the threat that the renunciant would be immediately physically assaulted by another camp inmate [R. 114]; in any event the hearings were not directed at, and thus they obviously did not reveal, the other kinds of pressures which we contend were influencing the renunciants.

Thus, assuming the truth of appellees' statements at their hearings that they intended to go to Japan, the fact that this was the only pressure towards renunciation which they stated creates no inconsistency in their cases. For with the utmost credit to the statements at these hearings, it can not be supposed that the appellees would have there stated the other factors influencing them to renounce which they have alleged and proved. Obviously, the wom-

⁵⁸Thus, Shimizu stated that her mother and father lived in Japan [R. 197], apparently feeling that this answer was expected of a renunciant, though they were in fact in the United States [R. 201, 202]; Murakami similarly first stated that her mother intended to stay in the United States [R. 162] but then announced that her mother wished to go to Japan [R. 162]; Sumi had an inexplicable sudden desire to be with her aged father in Japan [R. 152]; and in Inouye's case his indication that he in fact did not wish to remain with his parents, but was being pressured by them to do so [R. 180] was not investigated at all.

en-appellees' need to renounce in order to have a place of refuge for themselves and their children, together with their husbands, would not have been voiced; for it was true at the time of renunciation as throughout the program, that it was necessary in order to secure a place of refuge to conceal this need and instead to express the sentiments establishing a need for detention according to the Government's standards. And certainly the fear of violence would not have been voiced for this would have invalidated the renunciation, which the appellees had decided they needed to obtain, as well perhaps as provoked retaliation.⁵⁹

1. LACK OF FREE CHOICE WITH RESPECT TO DEPORTATION.

Assuming a decision to go to Japan was one of the motives for renunciation, such a decision was no more a product of free choice than was the renunciation itself. The appellants have stopped short in tracing the determination to renounce to its sources in that they have failed to consider the basis of the purported intention to go to Japan; an intention to go to Japan was, equally with the renunciation itself, a product of race discrimination, detention, and the other influences which invalidate the renunciation.

⁵⁹Such a fear of retaliation would exist in the atmosphere of apprehension in Tule Lake without direct proof that the pro-renunciation leaders could determine whether persons renounced (App. Br. 53); furthermore, in view of the dominating position of the organizations and their apparent access to Government Officials [see T & N 339], it would have been feared even aside from this atmosphere that these leaders could obtain such knowledge.

The *Doreau* case is illustrative of the insufficiency of appellants' method of analyzing the issues. There the determination to renounce was based upon a desire to secure the protection of French citizenship, a desire which would, without more, be a normal reason for renunciation rather than ground for a holding of duress; but this desire, and thus the resultant determination to renounce, did not represent a free choice because of the stresses and pressures which gave rise to it. Thus, while a choice to renounce American citizenship because the renunciant intends to live in Japan would, without more, be a free, valid, and binding choice, it is a coerced choice where the intention to so reside is in turn made under pressure and duress. In the instant case, the same elements as to the need for escape and refuge influenced renunciants to determine to go to Japan, as influenced them to seek internment as aliens (discussed *supra*, p. 44). Thus, in the case of the women-appellees, other than going to Japan with their husbands, the alternatives facing them at the time of renunciation were an indefinite term of years with their children in Tule Lake, perhaps ultimately followed by deportation, or a single-handed attempt to reestablish a life for themselves and their children without resources in a hostile community in the face of race violence.

It is clear from the record and there is no indication to the contrary, that the women appellees' intention of going to Japan arose as an escape from the alternatives we have described. And from the standpoint of assuring their unity with their husbands and going to Japan as a family,

renunciation was essential because the exchange arrangements did not apply to American citizens.⁶⁰

On any view of the case we can see no need for, or useful purpose in, a remand for further evidence as suggested by appellants (App. Br. 59). After moving for summary judgment, presumably on the basis of all the evidence it had available, appellants now wish to avoid the possibility of affirmance of the judgment against them by re-commencing the entire litigation. They attempt to make this procedure palatable by striving to impose on appellees the wholly unreasonable and impossible burden of refuting every supposition as to their motives for renunciation which appellants can conceive. We believe that appellees have affirmatively and convincingly established

⁶⁰The hearing officer's cavalier statement that there was no connection between renunciation and deportation [R. 162; App. Br. 48] reflects the inattention that was paid to the plight of the women renunciants and to their need to renounce in order to remain with their husbands.

If, in addition, any of the appellees believed they'd be better off in Japan without American citizenship (App. Br. 59), this does not affect the invalidity of their renunciations, for such invalidity results, we submit, because of the pressures which influenced them, in the first place, to determine to go to Japan. The same answer applies to the appellants' argument that they may have been influenced by a belief in Japanese victory (App. Br. 59); the important question is how and why they were first influenced to turn away from the United States and to Japan for their future. There is not, however, any indication in the record that they had any such belief, and there is instead entirely credible proof, as described in the text, of their motives for deciding to go to Japan. As to the fact that they did not attempt to retract their renunciations until after the Japanese defeat (App. Br. 41, 50), it is to be noted that two and three months respectively elapsed before two of the appellees made such attempts [R. 165, 201], thus indicating that factors other than the defeat motivated their efforts. "Furthermore, the need for a place of refuge, which was of prime importance in motivating the renunciations, was not alleviated until the end of the war. See R. 137, with respect to attempts by all center residents to have the centers maintained until the end of the war."

by a preponderance of evidence the fact that their renunciations were due to influences that deprived them of a free choice; that in the face of this proof appellants' suppositions cannot stand; and that even those suppositions if logically analyzed, would not establish appellees' free choice. Appellants' various attempts to undermine appellees' cases by showing "inconsistencies" in the pleadings or proof are equally unconvincing⁶¹ and give no indication that appellants could in any way overcome the preponderance of the evidence in appellees' favor, in the event of a remand. Furthermore, appellants do not, even in their request for a remand, indicate clearly what facts could be established thereby and what relevance such facts would have to the question of whether appellees renounced voluntarily, under any proper conception of this term. The remand would accomplish nothing but a prolongation of the proceedings.

E.

Conclusion as to Invalidity of the Renunciations.

We urge upon this Court the importance of invalidating the renunciations because of its high duty to prevent the denial of racial equality whether it is done expressly or merely "in substance and effect."⁶² Besides the fact

⁶¹We do not grasp the point of appellants' statement that its quoted part of Sumi's affidavit is the only evidence introduced as to her renunciation (App. Br. 45); they ignore, perhaps again because of a refusal to take cognizance of the basis for these cases, the uncontradicted allegation and proof that Sumi was affected by all the pressures which affected the renunciants generally, and in particular by the need for refuge and family unity. As to Murakami, we do not perceive any inconsistency in her position that her renunciation was influenced both by mistake and coercion (App. Br. 48).

⁶²*Oyama v. State of California*, 332 U. S. 633, 636.

which we have already emphasized, that a validation of the renunciations would perpetuate racial discrimination because of the latter's influence in producing the renunciations, it should also be pointed out that discrimination permeated the whole renunciation program in other respects. The statute itself was devised as a special procedure to continue the incarceration of citizens of the Japanese race, in large part because of public prejudice against them (*supra*, p. 17) though, even the bravado and defiance of some members of the race could not be deemed to show they were potentially more dangerous than quieter but more insidious and effective citizens of other races. And the very fact that the mass renunciants even had knowledge of the renunciation statute was due to their racial detention.⁶³ Further, no citizens of other races were subjected to the burdens imposed on the Japanese, and then "offered" renunciation; and it must be assumed, unless a racist view is adopted, that members of other races, at least those of enemy ancestry would have reacted similarly. It is because of this discriminatory background that, as an aftermath of the war, the only group of native-born citizens who may be left deprived of the benefits of their birthright of citizenship are those of the Japanese race. Thus, a validation of the renunciations would stand as a perpetuation of the entire discriminatory pattern, which was initiated, and its initiation permitted, only as a wartime emergency; and which,

⁶³Thus, the fact that some citizens of the Japanese race requested renunciation (App. Br. Note 77) does not alter the fact that the general announcement to the camp, instead of attention to the individual requests, was due to the treatment of all citizens of this race as a mass, and due to insufficient care to restrict the program to that intended by Congress.

in many features has never been held constitutional and seems the complete antithesis of constitutional principles. This Court has a particular duty of vigilance to protect members of racial minorities, who cannot rely on their political strength for protection, against being pressured to relinquish their rights in times of racial hostility.⁶⁴

And it is to be borne in mind that not only is there no present emergency that might justify this discriminatory deprivation of citizenship, but that even at the time of the program there was not even the semblance of the "compelling justification" necessary to sustain a racial discrimination,⁶⁵ as far as the mass renunciants were concerned. Instead, the statute was to serve as a temporary legal device for circumventing constitutional safeguards with respect to a small group of citizens. Thus, there is no justification for depriving appellees of their American citizenship, which when given its normal position, "by many . . . is regarded as the highest hope of civilized man,"⁶⁶ and exposing them to all the detriments of the status of alienage, including summary deportation.⁶⁷

⁶⁴See *Chambers v. Florida*, 309 U. S. 227, at p. 241, where the Court said: ". . . Courts stand . . . as havens of refuge for those who might otherwise suffer because they are helpless, weak, out-numbered, or because they are . . . victims of prejudice and public excitement" and at p. 236 where the Court remarked on the use as "scapegoats of the weak, or of helpless political, religious or racial minorities. . . ."

⁶⁵*Oyama v. State of California*, loc. cit. supra, note 62.

⁶⁶*Schneiderman v. United States*, 320 U. S. 118, 122.

⁶⁷See R. 102 as to the Department of Justice's view that Japanese nationality could be imputed to renunciants, and *Ludecke v. Watkins*, 335 U. S. 160, as to the still-existent power of the Attorney General to deport summarily enemy aliens.

II.

The District Court Had Jurisdiction in Case No. 11839
(Appellants' Point I).

A quick and decisive answer to appellants' claim that the record in No. 11839 is barren of any showing that the appellants denied appellees any right or privilege as nationals of the United States (App. Br. 32) is that that fact was admitted and therefore proved by the pleadings.

In the amended complaint, paragraph III [R. 3], appellees allege the ultimate fact that "the defendants . . . have denied the plaintiffs rights and privileges as nationals of the United States."

In their answer, paragraph III [R. 17] appellants pleaded:

"Defendants . . . Deny that plaintiffs are nationals of the United States and admit all the remaining allegations of Paragraph III of the said complaint."

It is now too settled for argument that facts admitted need not be proved. Indeed were the rule any other way, there would be little use for responsive pleadings.

The rule was long ago set forth by Chief Justice Marshall in *Alexander v. Harris*, 4 Cranch (U. S.) 299, 303:

"The issue gives notice to the parties of the point which is to be tried, and which the testimony must support. That which is admitted by the pleadings need not be proved."

And that rule has never been departed from. See:

M'Niel v. Holbrook, 12 Pet. (U. S.) 84;

Rolls County v. Douglass, 105 U. S. 728;

The Southern Express Co. v. The Western North Carolina R. R. Co., 105 U. S. 191;

Deputron v. Young, 134 U. S. 241, 250, 251;

Swift & Co. v. United States, 276 U. S. 311, 329.

Rule 8(d), Federal Rules of Civil Procedure, carries out this rule by providing that a fact not denied is deemed admitted. And when it is considered that the principle is so strong that "a finding which contradicts a fact admitted in the pleadings, is to be disregarded (*M'Ferran v. Taylor and Massie*, 3 Cranch (U. S.) 269, 280), appellants cannot now be heard to say that the admission was "inadvertant" (App. Br. 24, note 43).

The purpose of pleadings is to give the parties notice of what they will be expected to prove. It is a salutary rule designed to eliminate unessentials at a trial. Litigation would never be at an end if a plaintiff can be lulled into the impression that he has proved an element of his case and then be told that though defendant admitted that element, plaintiff must nevertheless prove it.

Nor was the fact as to whether appellants had denied appellees rights and privileges of nationals of the United States even "inferentially" posed by the pleadings (App. Br. 34). As stated by appellants in paragraph IV of their answer [R. 17, 18], appellees' allegation of jurisdiction in paragraph III of the amended complaint [R. 3] is a conclusion of law. And though it is customary for purposes of clarity in pleadings in the District Court to set forth the specific section under which the plaintiff claims the court has jurisdiction, jurisdiction is not determined from that allegation but from the facts alleged and, if necessary, proved. (*Cf. Gibbs v. Crandall*, 120 U. S. 105.)

The facts required by 8 U. S. C. 903 having been alleged in the complaint and those specific facts having been proved by the specific admission in the answer, the jurisdiction of the Court is established.⁶⁸ (*Gibbs v. Buck*, 307 U. S. 66, 72.)

There is however a greater reason, other than the technical one argued above and which, without question, binds the appellants. Appellants' argument that the Attorney General has done nothing to deny appellees any right or privilege as nationals takes out of 8 U. S. C. 903 much of its ameliorating and beneficent effect. The argument that appellants cannot restore appellees' citizenship (App. Br. 36), and therefore that they have nothing to do with this case, is beside the point. The statute merely requires that appellees be denied a right or privilege as nationals; it does not require that citizenship be restored by the department agency or executive official so denying.

The Attorney General denied appellees' right as a national when he illegally exercised the discretion given him under 8 U. S. C. 801(i) and approved the renunciation. This was a positive act of denial, citizenship being one way of being a national (8 U. S. C. 501(b)). By this positive act of illegally permitting appellees' citizenship to be taken away, appellants denied appellees a right as nationals. This is a continuing act on the part of appellants and satisfies the requirement of 8 U. S. C. 903. That section, "being remedial . . . is entitled to a liberal construction." (*Attorney General v. Ricketts*, 165 F. 2d 193, 195 (C. C. A. 9, 1947).)

⁶⁸Accordingly appellants' discussion about conferring jurisdiction by consent (App. Br. 34, note 43) is inapposite in these proceedings.

It is not reasonable that the statute be given the interpretation sought by appellants. The specter of having stateless persons wandering around the country [*Cf.* R. 193] uncertain as to their status and wondering as to their rights was precisely what was sought to be laid at rest by the statute. Appellees having been denied a right as nationals by appellees, they are entitled to a declaration under 8 U. S. C. 903 as to whether they are or are not citizens.

This is not the first time that appellants' argument to so strictly circumscribe the section has been made. In *Chin Wing Dong v. Clark*, 76 Fed. Supp. 648 (D. C., W. D., Wash. 1948), the same argument was made and rejected. Said the Court at page 652:

"I am mindful that in effect the Department merely argues against granting him the affirmative relief of decree of citizenship and that there has been no effort nor intention of deportation. In other words it is implied that the petitioner may live here, exercise the rights of citizenship, and even vote, but that the court should deny him a decree that he is the citizen that in fact he is. To require him to continue in the legal twilight of such uncertainty is neither fair to him nor worthy of this government . . .

"Therefore, it is only right that the citizenship he has repeatedly established be confirmed by appropriate decree under 8 U. S. C. A. 903 aforesaid."

And so here.⁶⁹

⁶⁹The question of whether the general declaratory judgment statute is applicable here is, as pointed out in *Brassert v. Biddle*, 148 F. 2d 134, 136 (C. C. A. 2d, 1945), unimportant. Both that case and *Ginn v. Biddle*, 60 Fed. Supp. 530 (D. C. E. D. Pa., 1945), recognized that even after the passage of 8 U. S. C. 903, the Declaratory Judgment Act (28 U. S. C. 400) could serve as a basis

III.

The Renunciation of Albert Inouye (Appellants' Point III).

Appellees have made clear their views that individual proof in each case is not required. (Points IB and IC.)

However, if such individual proof be required, there is ample proof in the record to support Judge Cavanah's holding [R. 333-334] that "the youth (Inouye) yielded to parental compulsion and a clear case of 'parental influence' in order to hold the family intact," and that [R. 336] "the results flowing from that parental domination and the acts of fear constitute undue influence, duress and coercion require them to be declared null and void" and his finding [R. 366] that her renunciation was due to "undue influence and parental coercion" [see R. 179, 180, 182-185, 187, 191, 342-348]. Even appellants' own evidence supports the finding [R. 171, 172].⁷⁰ The findings, therefore, "are not clearly erroneous" and this court will accordingly affirm. (*Attorney General v. Ricketts*, 165 F. 2d 193, 195

for determination just as it did prior thereto in *Perkins v. Elg*, 307 U. S. 325.

And appellants' objection *re* appellant Carmichael, if valid at all, is raised too late. If appellants objected to the presence of Carmichael in the case, they should have made objection to the Court's jurisdiction over his person by motion at the proper time. (*Ginn v. Biddle*, 60 Fed. Supp. 530, 531 (D. C. E. D. Pa., 1945); *Orange Theatre Corp. v. Rayherstz Amusement Corp.*, 139 F. 2d 871, 874 (C. C. A. 3rd, 1944), cert. den. 322 U. S. 740; *Branic v. Wheeling Steel Corp.*, 152 F. 2d 887, 888 (C. C. A. 3rd, 1945).)

⁷⁰The hearing given Inouye in the Alien Internment Camp, Santa Fe, New Mexico, cannot be disconnected from the whole renunciation procedure [see R. 189, par. (5)]. And the finding by the Hearing Officer [R. 192] must be considered not merely as an opinion that Inouye renounced under parental influence but a clear finding to that effect [R. 172]. Under these circumstances, sufficient proof to support the allegation that the renunciation was not his free and voluntary act [R. 3, par. V] was adduced. And *cf. supra*, p. 57.

(C. C. A. 9, 1947).) But in any event, Inouye's purported renunciation was invalid because he was a minor under the age of 21 [R. 181, 182, 367].

Appellants' argument (App. Br. 61-71), viewed in its most favorable light, at best establishes but one thing; that there is perhaps an ambiguity in 8 U. S. C. 801 and 8 U. S. C. 803(b). Assuming, *arguendo*, that this is so, *Perkins v. Elg*, 307 U. S. 325, 337 directly controls the disposition of the case for it was there held that "rights of citizenship are not to be destroyed by an ambiguity." And *cf. Schneiderman v. United States*, 320 U. S. 118, 122, 125.

The action of Congress in quite clearly excepting from the provisions of 8 U. S. C. 803(b) all but subsections (b) to (g) *inclusive* of 8 U. S. C. 801 calls for the direct application of the maxim *expressio unius est exclusio alterius*.

No reported decision, other than that by the court below, has been found on the precise point. However, the decision of the Board of Immigration Appeals in the case of *Ismael Acosta Hernandez*, No. 56196/251,⁷¹ is com-

⁷¹This is the decision referred to by appellants at page 69, note 74 in their brief. The entire opinion of Appellant Clark, in reversing the decision of the Board of Immigration Appeals, and in which he administratively legislated, is as follows:

"The decision and order of the Board of Immigration Appeals are reversed. I feel the Congress intended that the statute apply to persons under 21 who leave the United States for the purpose of evading or avoiding training and service in the land or naval forces. The view that the Congress failed to accomplish this purpose can, of course, be presented to the courts by the persons affected and I think under the circumstances a judicial determination of the question is desirable." (Decision of May 15, 1946.)

The instant case is an occasion for such a determination and to reject appellants' argument. Indeed the appellant himself in the above opinion, in effect, suggests the rejection of his point of view.

pletely apposite. That decision held squarely that a boy 19 years old (Inouye was 18 at the time he purported to renounce) [R. 181, 182] could not expatriate himself under the provisions of 8 U. S. C. 801(j) because he was not yet 21. The reasoning of that decision is equally applicable to subsection (i) as appellants themselves have recognized (App. Br. 68, 69). For the convenience of this Court that decision is set out in full herein as Appendix A.⁷² Appellees submit that that decision is correct and should be applied by this Court in this case to subsection (i). Cf. *Attorney General v. Ricketts*, 165 F. 2d 193, 194 (C. C. A. 9, 1947).

Appellants' efforts to spell out some sort of a scheme that 18 years is *the* age of expatriation in the Nationality Act of 1940 (App. Br. 63) fall of their own weight. By pointing to the various sections wherein Congress did make 18 years the age (App. Br. 63, 64), and in one case gave certain rights up to 23 in view of *Perkins v. Elg* (App. Br. 67), they have emphasized that where Congress meant to change the common law rule of *Perkins v. Elg*, 307 U. S. 325, it specifically said so.

It is to be observed that the italicized portions of appellants' quotation from page 69 of *Codification of the*

⁷²Attached to the decision of the Board of Immigration Appeals, and reprinted here as a part of Appendix A, is a memorandum prepared by the Legal Adviser to the Department of State showing that the same reasoning is applicable to subdivision (a) of 8 U. S. C. 801. Appellants themselves argue that the same rule is applicable for subdivision (i) as for subdivision (a) (App. Br. 66-67).

Nationality Laws (House Committee Print, 76th Cong., 1st Session) (App. Br. 64) is pure *dictum*, if one may so characterize a committee report. The report was speaking of *this subsection*, namely subsection (b) of 8 U. S. C. 803. That subsection is specifically limited to subsections “(b) to (g) *inclusive*,” (italics added) of 8 U. S. C. 801. And so also must the quotation from page 67 of Codification of the Nationality Code (App. Br. 65) be read in its context, namely with reference to “this provision”—8 U. S. C. 803(b).

Similarly the excerpt from Sen. Rep. 2150, 76th Cong., 3d Sess., p. 4 (App. Br. 65) speaks of “certain *specified* acts” of expatriation—not *all* acts of expatriation.

In the light of the strong and positive holding of *Perkins v. Elg*, 302 U. S. 307, 337 that “rights of citizenship are not to be destroyed by an ambiguity,” the weakness of appellants’ argument becomes apparent. Witness these words in their effort to arrive at Congressional intent: “speculate”; “possible”; “plausible” (App. Br. 66); “might have been deemed”; “might have obtained”; “speculations”; “possible” (App. Br. 67); “may have had good reason”; “inferable” (App. Br. 68). It is submitted that the precious right of citizenship (see *Schneiderman v. United States*, 320 U. S. 118, 122, 125) cannot be so nonchalantly and conjecturally obliterated.

The Nationality Act in 1940 in which *for certain specific acts* the age of expatriation was made 18, having been passed subsequently to the decision of *Perkins v. Elg*,

302 U. S. 307 (1939), the conclusion is inescapable that Congress intended the rule of that decision to apply where it had not changed it. Certainly speculation and surmise cannot serve to change that general rule and result in loss of citizenship for Inouye.

While administrative construction is entitled to great weight (App. Br. 70), where that construction is contrary to the terms of the statute, it will not be followed by the Court (See *Bay Ridge Operating Co. v. Aaron*, 334 U. S. 446.) Furthermore, it must not be forgotten that Inouye answered Question 28 in the affirmative and not in the negative [R. 192] and therefore does not come at all within the purview of 8 U. S. C. 801(i) or that section was never intended to cover those who had answered the loyalty question in the affirmative. (See App. Br. 70, and *supra*, Point I C.)

And finally, it is clear that rather than fly in the face of what appellants have called the "manifest" Congressional intent (App. Br. 70), the situation that one can renounce if outside this country at the age of 18 but cannot do so if inside this country is precisely what Congress intended. In the first place, Congress said so in 8 U. S. C. 803(b). In the second place, Congress was not unmindful of the existence of subsection (i). Thus at the same time it passed 8 U. S. C. 803(b) it also passed 8 U. S. C. 803(a). That latter subsection recognizes a distinction between 8 U. S. C. 801(f) for it there says that:

“Except as provided in subsections (g), (h), and (i) of section 401 (8 U. S. C. 801), no national can expatriate himself, or be expatriated, under this section *while within the United States* or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section if and *when the national thereafter takes up a residence abroad.*” (Italics added.)

Here then, is specific recognition by Congress of a distinction between expatriation while within and expatriation while without the United States. It is to be noted that all of the subsections of 8 U. S. C. 801 except subsections (g), (h), and (i) refer to acts outside the United States.

For this Court to give the construction contended for by appellants would be to re-write the statute. This the Court will not do. As the Supreme Court has said: “It is not for (the Courts) to add to the legislation what Congress pretermitted.” (*United States v. Monia*, 317 U. S. 424, 430.)⁷³

The decision of the lower court as to the renunciation of Inouye is unquestionably correct.

⁷³And compare the action of the Michigan Supreme Court in *General Motors Corp. v. Michigan Unemp. Comp. Comm.*, November 12, 1948, digested at 22 L. R. R. 82.

Conclusion.

The judgments of the lower courts as to all appellees should be affirmed.

Respectfully submitted,

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APPENDIX A.

UNITED STATES DEPARTMENT OF JUSTICE BOARD OF IMMIGRATION APPEALS.

December 13, 1945.

56196/251—El Paso

IN RE: ISMAEL ACOSTA-HERNANDEZ
IN EXCLUSION PROCEEDINGS.

The Commissioner has found that the appellant, a nineteen-year-old native of the United States, lost his American citizenship under section 401(j) of the Nationality Act of 1940, as amended, and has recommended that the decision of the board of special inquiry excluding him on documentary grounds be affirmed. The case has been forwarded to us for review in accordance with 8 C. F. R. 90.3, the Commissioner in his transmitting memorandum requesting that the case be certified to the Attorney General for review in the event the Board did not see fit to follow his recommendation.

The pertinent facts in this case are set forth in the Commissioner's memorandum opinion and will not be repeated here. The sole issue presented by the record is whether a citizen of the United States can lose his American citizenship under section 401(j) of the Nationality Act of 1940, as amended, prior to attaining his twenty-first birthday. The Board in *Matter of Angule*, 56175/440 (August 3, 1945) answered this question in the negative and, for the reasons to follow, still adheres to that view.

Subsection (j) was added to section 401 of the Nationality Act of 1940 by section 1 of the Act approved

September 27, 1944 (58 Stat. 746). This subsection provides for the loss of nationality on the part of a citizen "departing from or remaining outside of the jurisdiction of the United States * * * for the purpose of evading or avoiding training and service in the land or naval forces of the United States." The amendatory legislation did not explicitly provide, either independently of the Nationality Act or by way of an amendment to that Act, any age limit below which expatriation could not be affected. So far as we have been able to ascertain, this matter was never specifically considered by the framers of the legislation, the pertinent congressional committees or by the Congress as a whole during the debates on the legislation.

This being so, Congressional history, and in particular quotations of general and broad statements made on the floor of the House and Senate (upon which statements the Commissioner largely relied in reaching his conclusion) can afford no concrete and accurate basis upon which the intent of Congress in this regard may be ascertained, especially, as will be shown below, when viewed in the light of the common law and the other subsections of section 401.

Prior to the enactment of the Nationality Act of 1940, expatriating statutes contained no express provision as to any age limit below which loss of citizenship could not result. But the common law, as is clear from many authoritative judicial decisions by both federal district and

state courts, did fix such an age limit at twenty-one.¹ The Supreme Court of the United States in *Perkins v. Elg*, 307 U. S. 325 (1939), recognized the existence of this rule when it said (p. 334): "To cause a loss of that citizenship (acquired through birth in the United States) in the absence of treaty or statute having that

¹For example, in *Ex parte Chin King*, 35 Fed. 354 (C. C. Oregon, 1888), the court said (p. 356): "This *status* (citizenship), once acquired, can only be lost or changed by the act of the party when arrived at majority * * *." Again in *U. S. ex rel. Baglivo v. Day*, 28 F. (2d) 44 (S. D. N. Y., 1928), it was said (p. 44), "A native-born citizen, who has not attained the age of twenty-one years, cannot renounce allegiance to the United States." The very same court had employed similar language in 1919 in *Ex parte Gilroy*, 257 Fed. 110, in saying (p. 119), "Until * * * realtor became twenty-one years of age, he was not competent to renounce his allegiance to the United States of America." To like effect was the statement in *McCampbell v. McCampbell*, 13 F. Supp. 847 (W. D. Ky., 1936), the court there saying (p. 849), "There are no exceptions to the rule that an infant lacks the power to renounce his allegiance to the United States." Like language was employed by courts of highest resort in the states of New York and Vermont in *Ludlam v. Ludlam*, 26 N. Y. 356, 376 (1863) and *State ex rel. Phelps v. Jackson*, 79 Vt. 504, 514, (1907), respectively. For additional authorities see *U. S. ex rel. Wrono v. Karnuth*, 14 F. Supp. 770 (W. D. N. Y., 1936); *In re Cordaro*, 246 Fed. 735 (N. D. Iowa, 1917); *In re Spitzer*, 160 Fed. 137 (C. C., Ill., 1908; *Nationality of Minors*, 14 B. U. L. R. 524, 536; *Involuntary Expatriation of Minor Children*, 7 Geo. Wash. L. R. 639, 645; *Citizenship and Expatriation of Minors Under Nationality Act of 1940*, 35 Ill. L. R. 607, 609, 610; 34 Col. L. R. 1366. *In re Carver*, 142 Fed. 623, 624 (C. C. Me., 1905), cited by the Commissioner in his memorandum as reflecting a contrary view, does not appear to be in point. The statement by the court that a less than eighteen year old army deserter might lose his rights to citizenship under sections 1996 and 1998 of the Revised Statutes upon conviction for desertion was *obiter dictum*. Moreover the statutes there concerned dealt, at least on their face, not with the loss of citizenship but loss of *rights* of citizenship. Cf. *Weedin v. Chin Bow*, 274 U. S. 657 (1927); *Shelley v. United States*, 120 F. (2d) 734 (Ct. App. D. C., 1941); *Matter of Paquette*, 56011/385 (approved by the Attorney General November 22, 1941).

effect, there must be voluntary action and such action cannot be attributed to an infant . . . who during minority is incapable of a binding choice.”² The administrative view, except so far as concerned a minor’s loss of citizenship through the naturalization of his parents in a foreign country³ (subsequently reversed by the Supreme Court in the *Elg* case, *supra*), was in accord.⁴

When the Nationality Act was finally enacted by Congress and approved on October 14, 1940 by the President, section 403(b) read then as it reads now.

²The Supreme Court in *United States v. Wong Kim Ark*, 169 U. S. 649 (1898) had suggested the existence of this principle when it said (p. 704), “No doubt he might himself, after coming of age, renounce this citizenship * * *. Whether any act of himself, or of his parents, during his minority, could have the same effect, is at least doubtful.”

³See Report of the President’s Committee on Codification of the Nationality Laws of the United States, 76th Cong., 1st Sess., House Committee Print, Part I, p. 66 for a recital of the administrative practice in this regard. As can be seen from this comment, the administrative officials, prior to the *Elg* decision, took the position that to preserve the principle of the singleness of allegiance of the family, a minor child took the citizenship of the parents. This discarded theory of the singleness of allegiance of the family unit might well explain the decision in the *Wittus* case, 47 F. (2d) 652 (D. Mich. 1931), in which it was held that a nineteen year old American woman lost her citizenship, under section 3 of the Act of March 2, 1907 by marriage, prior to 1922, to an alien. See also *Nationality of Minors, supra*, where it is said that at common law minor children and wives took the nationality of the father-husband. The *Elg* case made it clear that minor children did not *ipso facto* expatriate themselves by reason of the naturalization of their parents and a like principle logically would seem to apply to wives who married aliens during their minority.

⁴In its comments on the proposed second proviso to section 401 of the proposed Nationality Act (which became section 403(b) in the Act) the committee, consisting of representatives of the Departments of State, Labor, and Justice, said, “It will be observed that in this subsection the age below which a person cannot expatriate himself is set at 18 years, *instead of 21 years.*” Report of the President’s Committee, *supra*, Part I, p. 69.

“No national under 18 years of age can expatriate himself under subsections (b) to (g), inclusive, of section 401.”

Obviously the express provisions of section 403(b) with respect to the effective expatriating age had no application to either subsection (a) or (h)⁵ of section 401. Congress could not then have intended that the eighteen-year-old age limit was to apply to these subsections, for presumably it would have said so in 403(b). It did specifically provide in the provisos to subsection (a) that twenty-three years was to be the age in the case of minors who acquired foreign nationality by reason of their parents' naturalization. It was silent, however, as to the first clause of subsection (a) dealing with those who obtained naturalization in a foreign state upon their own application and as to subsection (h). In adding subsections (i) and (j) to section 40, it also remained silent, nothing being said, as we indicated above, in the subsections themselves or by way of an appropriate amendment to section 403(b).

The fact that eighteen years could not have been the age limit intended by Congress to apply to the above-mentioned subsections does not mean, as the Commissioner suggests, that no age limit was intended, and that Congress meant that all minor citizens, regardless of their tender years, their immaturity and the degree of parental influence and pressure that might have been exercised over

⁵The legislative history of the Nationality Act discloses that subsection (h) was added by the Senate after the Act was passed by the House without this subsection. The draft bill submitted by the President's Committee did not contain subsection (h) as it now reads. See House Reports 2396 and 3019, and Senate Report 2150 (76th Cong., 3d Sess.).

them, were to be subjected to the serious penalty contemplated by these provisions. It is axiomatic that statutes in derogation of the common law must be strictly construed. *Scharfeld v. Richardson*, 133 F. 2d 340, 341 (Ct. App. D. C., 1924); *West Va. Pulp & Paper Co. v. McElligott*, 40 Fed. Supp. 765, 771 (S. D., N. Y., 1941); *Ward v. White*, 97 F. 2d 646, 648 (Ct. App. D. C., 1938); cert. den. 304 U. S. 578; *Globe & Rutgers Ins. Co. v. Draper*, 66 F. 2d 985, 991 (C. C. A. 9, 1933). And where, as here, substantive rights are affected, a statute, and in particular a penal one, should not be extended by implication to include persons who do not come within its terms. *Ward v. White*, *supra*; *West Va. Pulp & Paper Co. v. McElligott*, *supra*.

To construe section 401(j) to apply to minors would, of course, be in derogation of the accepted common law principle in the United States that minors could not expatriate themselves, a principle of which the Congress must presumably have been aware. It would accordingly mean reading into the Nationality Act words which are not there and which we must assume Congress did not intend should be there. It would be a usurpation on our part of the legislative function, which under our constitutional system is reserved to the Congress.

Finally, the Commissioner's theory logically applied must mean that the other subsections of section 401 in which no specific age limit is set apply to all minors irrespective of age. Yet, under the Service's administrative

practice, with which we and the State Department⁶ are in accord, it has been held that minors cannot effectively lose their citizenship under the first clause of section 401(a) by becoming naturalized in a foreign state on their own applications. In other words, this clause applies only to those who have attained their majority, and subsections (h)—(j) to all citizens regardless of age. Such illogical and inconsistent results where precisely the same statutory language is employed cannot with any degree of conviction be said to represent the true intent of Congress. The best that can be said is that the statute so far as concerns the issue before us is ambiguous. If this be true, the Supreme Court's admonition in *Perkins v. Elg, supra*, page 337, that the "rights of citizenship are not to be destroyed by an ambiguity" is applicable here and justifies our conclusion that section 401(j) has no application to minors.

We fully appreciate the force of the arguments advanced by the Commissioner in support of his contention, but to us it seems that these arguments are based not on what Congress did, but on what Congress ought to have done or would have done had the specific problem been brought to its attention. Whatever may be our own personal inclinations as to the desirability, from a policy point of view, of construing 401(j) to bring this appellant within

⁶See attached copy of a memorandum, dated September 30, 1944, prepared in the office of the Legal Advisor to the Department of State. We have been authorized to say that this memorandum represents the views of that Department.

its scope, we do not feel that we are the proper agency to bring about such a result. That is a matter which is the sole concern of the Congress. Omissions in a statute should be supplied by the legislative arm of the government and not by administrative fiat.⁷

ORDER: The Commissioner's order affirming the excluding decision of the Board of special inquiry is reversed and the appellant is admitted as an American citizen.

/s/ THOS G. FINUCANE,
Chairman.

⁷The Board in *Matter of Valas*, 56127/854 (November 11, 1943) was confronted with a similar problem involving the proper construction of sections 13(c) and 28(c) of the Immigration Act of 1924 in regard to the admissibility to the United States of a neutral alien who had claimed exemption from military service under the provisions of the Selective Training and Service Act of 1940, as amended. (A copy of our opinion together with the memoranda prepared for the assistance of the Attorney General is attached for ready reference.) Our holding in that case (approved by the Attorney General on February 24, 1944) was on all fours with our present decision that omissions in a statute are to be supplied by Congressional action and not by administrative construction. Congress did subsequently correct the defect in section 28(c) by the enactment of Public Law 205, 79th Congress; Chapter 437, 1st Sess., approved October 29, 1945.

September 30, 1944.

NATIONALITY STATUS OF PERSONS NATURALIZED ABROAD
DURING THEIR MINORITY.*

Mr. Hackworth:

PD:

The attached cases raise the question of the capacity of a minor to expatriate himself under section 401(a) of the Nationality Act of 1940 by obtaining naturalization abroad "upon his own application."

In the Wong Kim Ark case, 169 U. S. 649, 704 (1898) it was stated that there was "no doubt" that Wong Kim Ark "might himself, after coming of age, renounce his citizenship" but that "whether any act of himself, or of his parents, during his minority, could have the same effect, is at least doubtful." In *Ex parte Chin King*, 35 Fed. 354, 356 (1888) it was said that the status of an American citizen acquired by birth in the United States "can only be lost or changed by the act of the party when arrived at majority."

In the case of *Ludlam v. Ludlam*, it has been held by a lower court that one Mr. Ludlam, born in the United States, had voluntarily expatriated himself by establishing a residence in Peru. The Court of Appeals of New York stated, however:

"When he left this country, and is found by the report to have 'expatriated himself,' he was but eighteen years of age, and therefore totally incapable of making any elec-

*Memorandum prepared by the Legal Adviser to the Department of State referred to in note 6 of the decision of the Board of Immigration Appeals.

tion in regard to his citizenship." 84 Am. Dec. 193, 208 (1863).

In the case of *State ex rel. Phelps v. Jackson*, the Supreme Court of Vermont said that "during his minority Horatio Nelson was not competent to expatriate himself." 65 Atl. 657, 660 (1907). In the case of *Ex parte Gilroy* the District Court for the Southern District of New York said: "Until . . . relator becomes 21 years of age, he was not competent to renounce his allegiance to the United States of America." 257 Fed. 110, 119 (1919). In the case of *United States ex rel. Baglivo v. Day*, the same court said: "A native-born citizen, who has not attained the age of 21 years, cannot renounce allegiance to the United States." 28 F. (2d) 44 (1928). In the case of *McCampbell v. McCampbell* the District Court for the Western District of Kentucky remarked: "There are no exceptions to the rule that an infant lacks the power to renounce his allegiance to the United States." 13 F. Supp. 847, 849 (1936).

Although the Department had for some time held that a minor could expatriate himself by taking an oath of allegiance to a foreign state, the Solicitor for the Department ruled in November 1928 that in view of the fact that there were two or more Federal decisions holding to the contrary, the Department should follow the decisions in the matter of granting passports notwithstanding the fact that it could in the exercise of the discretion conferred on the Secretary of State in such matters decline to do so. (III Hackworth's Digest of International Law, 274.)

In 1939 the case of Andrew Oswald Hannula, an American citizen born in the United States who had been naturalized in the Soviet Union on his own petition at the

age of twenty, and who, with the approval of the Soviet Authorities, had renounced his Soviet citizenship shortly after attaining his majority, the Department held that he could not be considered to have expatriated himself, and approved his application for registration as an American citizen. (*Ibid.* 276; 130—Hannula, Andrew Oswald.)

Certain language of the Supreme Court in the *Elg* case appears to confirm the rulings of the courts cited above. In that case the court said: "To cause a loss of that citizenship in the absence of treaty or statute having that effect, there must be voluntary action and such action cannot be attributed to an infant whose removal to another country is beyond his control and *who during minority is incapable of a binding choice.*" (307 U. S. 325, 334.) (*Italics added.*)

Section 401(b) of the Nationality Act provides that "no national under eighteen years of age can expatriate himself under subsections (b) to (g) inclusive of section 401," that is, by taking an oath of allegiance, voting, performing military service, etc. However, the act is silent with respect to the question at what age a national may expatriate himself by naturalization abroad on his own application (section 401(a)). Since section 403 expressly provides that a person under eighteen cannot express himself under specified subsections, and since subsection (a) is not included, it might plausibly be argued that persons under eighteen *are* capable of expatriating themselves under the latter subsection. It seems obvious, however, that that was not the intent of the act.

In an explanation of the provision of section 403 that a national under the age of eighteen years could not expatriate himself under subsections (b) to (g), inclusive, of section 401, it was stated in the comments accompanying

the President's message submitting the legislation to Congress that the reasons for the provisions were "obvious," and that "it does not seem reasonable that an immature person should be able to expatriate himself by any act of his own." Reference was then made to several of the court decisions discussed above and the following was added:

"It will be observed that in this subsection the age below which a person cannot expatriate himself is set at 18 years, instead of 21 years. It is believed that a person who has reached the age of 18 years should be able to appreciate fully the seriousness of any act of expatriation on his part. Moreover, in the time of war young men are frequently accepted for military service before they have reached the age of 21 years, and, under the laws of some foreign countries males become liable for the performance of involuntary military service when they reach the age of 18 years." (Part I, p. 69.)

However, there appears to be nothing in the Reports of the Committees of Congress, or the report or minutes of the Committee of Advisers, which throws any light on the question why section 403, containing the age restriction, made no reference to subsection (a) of section 401 in relation to expatriation through naturalization. It seems probable that in considering the question of the expatriation of minors, the fact that a minor might be naturalized abroad on his own application was completely overlooked. In any event the net result appears to be that if, as the courts have held, it was the law of the United States that a person under the age of twenty-one years was incapable of expatriating himself, that law has been changed by the Nationality Act of 1940 to the extent that a person eighteen years of age may expatriate himself under sub-

sections (b) to (g) but not under subsection (a). To hold that the 1940 Act amended the existing law by reducing from twenty-one years to eighteen years the age at which a person might expatriate himself by naturalization would involve, in effect, an amendment, by construction, of section 403 by changing the language from "subsections (b) to (g)" to "subsections (a) to (g)." Obviously this is not permissible.

Consequently, it appears that we are confronted with a situation under the law in which a person nineteen years of age who goes through a formal naturalization process, probably involving a renunciation of American nationality, and resulting in the acquisition of a foreign nationality, does not lose his American nationality, and in which, on the other hand, he loses his American nationality if at the same age he merely makes a renunciation of American nationality before an American consul, which does not result in the acquisition of a foreign nationality.

It may be noted that under the provisions of the Nationality Act of 1940 an alien may declare his intention to become an American citizen upon reaching the age of eighteen (sec. 331), may file his petition two years after the date of his declaration (at the age of twenty) (sec. 332) and he may be naturalized at any time after thirty days from the date of his petition, that is, before reaching the age of twenty-one years (sec. 334c). See also *United States v. Stabile*, 24 Fed. (2d) 98, and cases there cited. It may also be noted that under existing law a person in the military or naval service may be naturalized "regardless of age" (8 U.S.C., Supp. III, 1001). Since boys are inducted in the service at the age of eighteen years, and may, under certain circumstances, enlist even

before reaching that age, and become naturalized, the supposed incapacity of a minor to act in naturalization on matters becomes ridiculous. In this same connection, and with reference to section 3 of the Act of March 2, 1907, which provides that "any American woman who marries a foreigner shall take the nationality of her husband," it was held in *In re Wittus*, 47 Fed. (2d) 652, that an American woman marrying a foreigner lost her American citizenship, irrespective of the fact that she was only nineteen at the time of marriage.

However, in view of the fact that no reference is made in section 403 to 401(a) there seems to be no jurisdiction for holding that the law of the United States, as pronounced by the courts, to the effect that a minor could not expatriate himself, has been changed in so far as naturalization abroad is concerned. It is believed well settled that inconsistencies and omissions in statutes must be remedied or supplied by legislative action rather than by judicial or administrative interpretations.

May 6, 1946.

MEMORANDUM.**

Nationality Status of Ismael Acosta-Hernandez.

The sole question involved is whether a citizen of the United States can lose his citizenship under Section 401(j) of the Nationality Act of 1940, as amended, prior to reaching his twenty-first birthday. The respective views of the Commissioner of Immigration and Naturalization and the

**This memorandum was also prepared by the Legal Adviser to the Department of State. It was forwarded by letter of May 9, 1946, to the appellant, Clark, by the Acting Secretary of State. It illustrates that the State Department's views have consistently been *contra* to the appellants' and in accord with appellees'.

Board of Immigration Appeals are ably set forth in memorandum opinions, copies of which accompany the Attorney General's letter of January 8, 1946. In the present memorandum, the matter will be dealt with in the light of considerations and authorities which may not, thus far, have been taken into account.

Section 401 of the Nationality Act of 1940, as originally enacted, provided for the loss of nationality by an individual as a consequence of his performance of certain acts specified in subsections (a) to (h) inclusive. The section was amended by the Act approved July 1, 1944 (58 Stat. 667) by adding subsection (i). The section was further amended by the Act of September 27, 1944 (58 Stat. 746) by adding the following subsection (j):

“(j) Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States.”

It appears to be conceded that the individual here involved remained, during his minority, outside the United States on and after September 27, 1944, for the purposes proscribed by subsection (j). A construction of the subsection in such manner as to make it applicable to minors would, of course, be in derogation of the accepted common law principle in the United States that minors cannot expatriate themselves, a principle with which the Congress was presumably familiar. The Congress was presumably also aware of the fact that minors were subject to the provisions of the Selective Service and Training Act, as amended, and that they might, therefore, perform acts proscribed by subsection (j). However, as stated in the

memorandum opinion of the Board of Immigration Appeals, "It is axiomatic that statutes in derogation of the common law must be strictly construed." Moreover, the subsection must be construed in the light of Section 403(b) of the Act, which provides:

"No national under eighteen years of age can expatriate himself under subsections (b) to (g), inclusive, of section 401."

In Sutherland, *Statutory Construction* (3rd ed.) Vol. 1, pp. 431-432, the following statements are made with reference to "amendatory acts":

"The General rule of statutory interpretation that a provision in an act is to be read in its context, or as the same principle is expressed with reference to whole statutes, if an amendment is regarded as a separate act rather than part of an existing act, a statute is to be read in connection with other statutes pertaining to the same subject matter, is applicable to the interpretation of amendatory acts. *The original section as amended and the unaltered sections of the act, code, or compilation of which it is a part, relating to the same subject matter, are to be read together.* The act or code as amended should be construed as to future events as if it had been *originally* enacted in that form. Provisions in the *unamended* sections applicable to the original section to which it was applicable are applicable to the section as amended in so far as they are consistent." (Italics supplied.)

In Black, *Interpretation of Laws* (2d ed.) p. 576, it is stated that:

"An Amendment of a statute by a subsequent act operates precisely as if the subject-matter of the amendment had been incorporated in the prior act at the time of its

adoption, so far as regards any action had after the amendment is made. For it must be remembered that an amendment becomes a part of the original act, whether it be a change of a word, figure, line, or entire section, or a recasting of the whole language. For example, the act of Congress 'to correct errors and supply omissions in the Revised Statutes' amends the Revised Statutes by adding to them certain provisions of existing statutes; but the amendments are not in the nature of new enactments; they are to be construed as though the Revised Statutes were originally adopted with these alterations incorporated therein. And where an amendatory act uses the language 'under the limitations herein provided,' this must be taken to refer to the limitations in the original act as it stands after all the amendments made thereto are introduced into their proper places therein."

With reference to the fact that Congress amended Section 401 but did not expressly amend Section 403 of the same act, attention is invited to *Bennett v. Greenwalt* (286 N. W. 722) in which the Supreme Court of Iowa stated:

" . . . Where an amending act plainly states that it amends a specified section or part of an existing statute, it cannot be judicially construed as amending an unmentioned section. This rule is stated in 59 Corpus Juris, Section 647, page 1097, as follows: 'An act to amend a particular section in a general law is limited in its scope to the subject matter proposed to be amended. So where a statute purports to amend a designated clause of an existing statute, it will be presumed that such clause is the only one to which the legislature intended the amendment to apply.' The New Hampshire Court in *Healey v. Wheeler*, 75 N. H. 214, 72 A. 753, held that where a statute purports to amend a designated clause of another statute,

there is a presumption that it is the only clause to which the legislature intended it should apply. In his work on Constitutional Limitations, 5th Ed., 179, Cooley states: "The courts cannot enlarge the scope of the title: they are vested with no dispensing power. The constitution has made the title the conclusive index of the legislative intent as to what shall have operation. It is no answer to say that the title might have been made more comprehensive, if in fact, the Legislature has not seen fit to make it so."

See also to the same effect *Healey v. Wheeler* (72 Atl. 753).

Whatever may have been the thought of those who originated subsection (j) with respect to the application of the subsection to minors, the fact is that in fitting the provision within the framework of the Nationality Act of 1940, the Congress appears to have completely overlooked Section 403(b) of that Act. In any event, the latter provision was not expressly amended, and, in view of the above-cited authorities, it is not believed that there is justification for construing the subsection as amending the common law rule concerning the expatriation of minors. It is believed to be well settled that omissions and deficiencies in statutes must be supplied or remedied by legislative action rather than by administrative interpretations.

No. 11840

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE PULLMAN COMPANY, a corporation,
Appellant,
vs.

MAGGIE MAE TEUTSCHMAN,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

MAR 26 1948

PAUL P. O'BRIEN, CLERK

No. 11840

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by *printing in italic* the two words between which the omission seems to occur.]

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Portland, Oregon,

Attorneys for Appellant.

RYAN & PELAY,
T. H. RYAN,

American Bank Building,
Portland, Oregon,

Attorneys for Appellee.

In the Circuit Court of the State of Oregon
for the County of Multnomah

No. 174325

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
Corporation, and THE PULLMAN COM-
PANY, an Illinois Corporation.

Defendants.

NOTICE OF REMOVAL

To Maggie Mae Teutschman and Ryan & Pelay, her
Attorneys:

You and Each of You Will Please Take Notice
that the Defendants Southern Pacific Company and
The Pullman Company intend to file their petition
and bond for removal, copies of which petition and
bond are hereto attached and made a part hereof,
and that they will on Friday, the 17th day of Janu-
ary, 1947, at the hour of 9:20 o'clock a.m. thereof,
or as soon thereafter as counsel can be heard, apply
to the Presiding Judge of the above entitled court,
for an order removing the above named cause into
the District Court of the United States for the

District of Oregon, pursuant to the statutes of the United States made and provided therefor.

HAMPSON, KOERNER,
YOUNG & SWETT,
CLARENCE J. YOUNG,
Attorneys for Defendant,
Southern Pacific Company.

HUGH L. BIGGS,

Of Attorneys for Defendant, The Pullman Company. [1*]

[Title of Circuit Court and Cause.]

PETITION FOR REMOVAL

To the Honorable, the Circuit Court of the State of Oregon, for the County of Multnomah:

The petition of Southern Pacific Company and The Pullman Company, defendants in the above entitled action, appearing specially and for the sole and exclusive purpose of presenting this petition, show that heretofore and on or about the 7th day of January, 1947, the above entitled action, which is an action of a civil nature, was brought in this court by the above named plaintiff against your petitioners as defendants; that your petitioner, Southern Pacific Company, at the time of the commencement of said action was, ever since has been, and still is, a foreign corporation created by and existing under laws of the State of Kentucky, and

*Page numbering appearing at foot of page of original certified Transcript of Record.

at all of said times was and still is a citizen and resident of the State of Kentucky, and a non-resident of the State of Oregon; that your petitioner, The Pullman Company, at the time of the commencement of said action was, ever since has been, and still is, a foreign corporation created by and existing under laws of the State of Illinois, and at all of said times was and still is a citizen and resident of the State of Illinois, and a non-resident of the State of Oregon.

That plaintiff, Maggie Mae Teutschman, at the time of the commencement of said action was, ever since has been, and [2] still is, a citizen and resident of the State of Oregon.

That said action is one of a civil nature in which there is a controversy between citizens of different states, and that the amount in dispute in said action, exclusive of interest and costs, is the sum of \$40,000.00.

That said action is pending undetermined in this Court, and that the time has not yet arrived at which these defendants are required by the laws of the State of Oregon, or the rules of the Circuit Court of the State of Oregon, for the County of Multnomah, the court in which this action is brought, to answer or otherwise plead to the complaint of plaintiff, and that no application has been made to any court or judge for the order to be applied for in this petition.

That your petitioners desire to remove this action before the trial thereof, and within thirty days from the date of filing this petition, into the District

Court of the United States for the District in which this action is pending, to wit, the District Court of the United States, for the District of Oregon, and your petitioners make and file with this petition a bond with good and sufficient surety thereon, for their entering in such District Court of the United States, within thirty days from the date of the filing of this petition, a certified copy of the record in this action, and for their paying all costs that may be awarded by the said District Court of the United States for the District of Oregon, if said District Court shall hold that this action was wrongfully or improperly removed thereto.

And your petitioners pray that said surety and said bond may be accepted and that this action may be removed into the District Court of the United States, for the District of Oregon, pursuant to the statutes of the United States in such cases made and provided, and that no further proceedings may be had herein in this court, except the order to remove as required by law, and that your Honorable Court make an order approving said bond and [3] an order of the removal of this action, and to that end your petitioners will ever pray.

SOUTHERN PACIFIC
COMPANY,

By CLARENCE J. YOUNG,

One of Its Attorneys,

THE PULLMAN COMPANY,

By HUGH L. BIGGS,

One of Its Attorneys.

State of Oregon,
County of Multnomah—ss.

I, Clarence J. Young, being first duly sworn, depose and say that I am one of attorneys for Southern Pacific Company, a corporation, one of defendants within named; that I have read the foregoing petition for removal, and that the matters and things therein set forth are true as I verily believe.

CLARENCE J. YOUNG,

Subscribed and sworn to before me, this 15th day of January, 1947.

[Notarial Seal] DOROTHY THAIN,
Notary Public for Oregon.

My Commission Expires December 20, 1948. [4]

State of Oregon,
County of Multnomah—ss.

I, Hugh L. Biggs, being first duly sworn, depose and say that I am one of attorneys for The Pullman Company, a corporation, one of defendants within named; that I have read the foregoing petition for removal, and that the matters and things therein set forth are true as I verily believe.

HUGH L. BIGGS.

Subscribed and sworn to before me this 16th day of January, 1947.

[Notarial Seal] CAROLINE EVANS,
Notary Public for Oregon.

My Commission Expires March 17, 1948. [5]

[Title of Circuit Court and Cause.]

UNDERTAKING

Know All Men by These Presents, that we, Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky, and The Pullman Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, as principals, and James A. Lathrop, of Portland, Oregon, as surety, are held and firmly bound unto Maggie Mae Teutschman, in the penal sum of Five Hundred Dollars (\$500.00) lawful money of the United States, for the payment of which sum well and truly to be made unto the said Maggie Mae Teutschman we bind ourselves, our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

This bond is upon the condition, nevertheless, that whereas said Southern Pacific Company and The Pullman Company, the principal obligors herein and defendants in the above entitled action, have filed their petition in the above entitled action in the Circuit Court of the State of Oregon, for the County of Multnomah, for the removal of a certain cause therein pending wherein the said Maggie Mae Teutschman is plaintiff, and the said Southern Pacific Company and The Pullman Company are defendants, to the District Court of the United States, for the District of Oregon.

Now, Therefore, if the said Southern Pacific Company and The Pullman Company shall enter in said District Court of the [6] United States, for the Dis-

trict of Oregon, within thirty days from the filing of their petition for the removal of said cause, a certified copy of the record in said action, and shall well and truly pay all costs that may be awarded by the said District Court of the United States, for the District of Oregon, if the said District Court shall hold that said action was wrongfully or improperly removed thereto, then this obligation shall be null and void, otherwise to remain in full force and effect.

In Witness Whereof, said Southern Pacific Company and The Pullman Company, as principals, have caused this instrument to be executed, respectively, by one of their attorneys, and James A. Lathrop, as surety, has hereunto set his hand and seal this 15th day of January, 1947.

SOUTHERN PACIFIC
COMPANY,

By CLARENCE J. YOUNG,
One of Its Attorneys.

THE PULLMAN COMPANY,
By HUGH L. BIGGS,
One of Its Attorneys.

JAMES A. LATHROP,
Surety.

State of Oregon,
County of Multnomah—ss.

I, James A. Lathrop, being first duly sworn, on oath depose and say that I am surety on the within bond; that I am a resident and householder within

said County and State; that I am neither an attorney nor counselor at law, sheriff, clerk, or other officer of any court, and that I am worth over and above all my debts and liabilities, exclusive of property exempt from execution, a sum in excess of One Thousand Dollars (\$1,000.00).

JAMES A. LATHROP.

Subscribed and sworn to before me this 15th day of January, 1947.

[Notarial Seal] DOROTHY THAIN,

Notary Public for Oregon.

My Commission Expires December 20, 1948. [7]

[Title of Circuit Court and Cause.]

ORDER OF REMOVAL

At this time come the defendants above named, Southern Pacific Company and The Pullman Company, and present a petition asking for the removal of the above entitled action from the Circuit Court of the State of Oregon, for the County of Multnomah, to the District Court of the United States, for the District of Oregon, which petition sets forth the reasons for said removal, to wit:

That this action is of a civil nature and that the amount in dispute, exclusive of costs and interest, is the sum of \$40,000.00; that the controversy in this action is between citizens of different states, plaintiff being a citizen and resident of the State of Oregon, and the defendant Southern Pacific Company being a citizen and resident of the State of

Kentucky and a non-resident of the State of Oregon, and the defendant The Pullman Company being a citizen and resident of the State of Illinois and a non-resident of the State of Oregon; and

It Further Appearing from said petition that said action is pending undetermined in this court, and that the time has not yet arrived at which these defendants are required by the laws of the State of Oregon, or the rules of the Circuit Court of the State of Oregon, for the County of Multnomah, the court in which this action is brought, to answer or otherwise plead to the complaint of plaintiff, and that no application has previously [8] been made to any court or judge for the order applied for in said petition; and

It Further Appearing to this court that said Southern Pacific Company and The Pullman Company have presented a bond to this court as is provided by law, and it further appearing to this court that said bond and petition are sufficient to authorize the removal of said action to the District Court of the United States, for the District of Oregon;

Now, Therefore, It Is Hereby Considered, Ordered and Adjudged that said bond be and it is hereby accepted and approved, and that this court proceed no further in this action. and that the same be and it is hereby transferred to the District Court of the United States for the District of Oregon, and that the clerk of this court prepare and file a complete copy of the record of this court in the above entitled action and certify to the same as a copy of said record, and forward the same to the clerk of

the District Court of the United States, for the District of Oregon, within thirty days from the filing of the petition herein.

Dated at Portland, Oregon, this 17th day of January, 1947.

/s/ CHARLES W. REDDING,
Judge.

This Transcript of Removal from Multnomah County filed February 12, 1947. [9]

In the District Court of the United States
for the District of Oregon

No: Civ. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff.

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
Corporation, and THE PULLMAN COM-
PANY, an Illinois Corporation,

Defendants.

AMENDED COMPLAINT

Comes now the plaintiff and with leave of Court files her amended complaint herein and alleges as follows:

I.

That defendant, Southern Pacific Company is a corporation organized and existing under the laws of the State of Kentucky and registered to do bus-

iness in the State of Oregon, and that Frank C. McCulloch of Portland, Oregon, is their attorney in fact for service in Oregon.

II.

That the defendant, The Pullman Company, is a corporation organized and existing under the laws of the State of Illinois and registered to do business in the State of Oregon, and that P. L. Pflager is their attorney in fact for service in the State of Oregon.

III.

That at all times herein mentioned defendant, Southern Pacific Company, operated and maintained a railroad between the City of Los Angeles, California, and the City of Portland, Oregon; and offered to the public passenger service between said points.

IV.

That the defendant, The Pullman Company, at all times herein mentioned operated a sleeping car service in conjunction with the passenger service [10] of the Southern Pacific Company between Los Angeles, California, and Portland, Oregon, and offered to the public accommodations for sleeping on said trains operated by defendant, Southern Pacific Company.

V.

That plaintiff is an elderly woman of the age of 61 years and unfamiliar with travel on trains and use of sleeping accommodations.

VI.

That on or about the 9th day of January, 1946, plaintiff purchased for valuable consideration from defendants, and each of them, a railroad ticket on defendant, Southern Pacific Company's passenger train from Los Angeles, California, to Portland, Oregon, and a lower berth accommodation for the night of January 9th and 10th on defendant, The Pullman Company's sleeping car attached to said defendant, Southern Pacific Company's train. Plaintiff boarded the train at Los Angeles and that while on route to Portland entered the sleeping car operated by the defendants, and each of them, and was informed by defendant's agent in attendance therein that her sleeping accommodation was not for a lower berth but for an upper berth and that no lower berth was available on said train. Plaintiff informed defendant's agent that she had never used an upper berth and was not acquainted with the use thereof, but because no lower berth was available plaintiff accepted the assistance of defendant's agent and entered said upper berth with said assistance and lay thereon without removing her clothes. Defendants' agent failed at that time, or thereafter, to fasten the curtain and protective straps or to inform plaintiff about the same. Plaintiff fell asleep fully dressed, and on or about January 10, 1946, was violently thrown to the floor by the negligent operation of said train, causing injuries as hereinafter more fully set forth.

VII.

That said fall and the injuries resulting therefrom was the sole and proximate result of the negligent manner in which defendants, and each of them, operated and maintained said train. car, berth and equipment and the failure of defendants and each of them to exercise the high *degree* of care required of them toward passengers unfamiliar with travel and in particular of the plaintiff herein in requiring plaintiff to take an upper berth after she had purchased a lower berth.

By order
9/29/47
R De

The proximate cause of plaintiff's injury was the failure of defendant's employees to see that the inside buttons on the upper curtain were fastened. This would have kept plaintiff either from falling out or getting out. In plaintiff's crippled and confused condition, which was known to defendant's employees, it was their duty to take all reasonable measures to save her from being harmed.

VIII.

That as a result of the negligence of defendants, and each of them, plaintiff received a fracture of her right femur and a permanent lameness of the right leg; permanent injuries to the muscles, ligaments, tendons and vertabrae of the neck and spine; severe and permanent shock and injury to her nervous system; general bruises, contusions and abrasions and suffered a straining and spraining of the muscles, ligaments and tendons of the right side; and plaintiff further suffered a serious and painful

aggravation of a previously existing injury to her right hip and leg and a severe aggravation of a previously slight condition of lameness; that said injuries are severe, painful and permanent and that plaintiff is required to take sedatives to ease pain and induce sleep; that she was confined in the hospital and her home for approximately 11 months and had applied to her right leg and thigh a long spica cast, all to the plaintiff's damage in the sum of \$37,500.00.

IX.

That as a sole and proximate result of the negligence of the defendants, and each of them as hereinbefore stated, plaintiff was required to employ the service of physicians, surgeons and nurses, and persons to assist her in caring for herself at home; to undergo general hospital treatment and surgical care; purchase drugs, surgical aids and ambulatory aids and to employ ambulances, taxicabs and transportation; that the costs of said treatment, equipment and transportation has been to date the sum of \$2500.00, and plaintiff reserves the right to amend her complaint at time of trial to include any further expenditures.

Wherefore, plaintiff demands judgment against the defendants, and each of them, jointly and severally in the sum of \$37,500.00 as general damages and [12] the sum of \$2500.00 as special damages, and for her costs and disbursements incurred herein.

RYAN & PELAY,

Attorneys for Plaintiff.

By T. H. RYAN,

[Endorsed]: Filed June 3, 1947. [13]

[Title of District Court and Cause.]

ANSWER

Defendant The Pullman Company for its answer to plaintiff's complaint admits, denies and alleges:

I.

This defendant admits the allegations contained in paragraph I of plaintiff's complaint.

II.

This defendant admits the allegations contained in paragraph II of plaintiff's complaint.

III.

This defendant admits the allegations contained in paragraph III of plaintiff's complaint.

IV.

This defendant admits the allegations contained in paragraph IV of plaintiff's complaint.

V.

This defendant denies generally each and every other allegation, matter and thing in plaintiff's complaint contained, and the whole thereof, except as to the matters and things hereinafter admitted stated or qualified. [14]

For an Affirmative Answer and Defense, this defendant alleges:

I.

On or about the 9th day of January, 1946, at Martinez, California, plaintiff, who was en route from

Los Angeles to Portland via Southern Pacific lines, boarded this defendant's tourist car KG which was a part of defendant Southern Pacific's northerly-bound passenger train No. 18. Plaintiff purchased space in upper berth No. 14 on said car, and shortly after boarding the car entered said berth with the assistance of a porter who thereupon drew together the curtains of said berth. Prior to plaintiff's entering the berth the curtains thereon had been securely fastened at top and bottom to rods which were secured to the car and which extended the full length of and parallel with the berth. The curtains were so equipped and designed that they could readily be buttoned and fastened from the inside of the berth by the occupant thereof. Some time after plaintiff had retired and after the train had left Red Bluff, California, and was proceeding toward the next station north thereof, plaintiff, who in a manner unknown to this defendant had descended from said berth, was found lying on the floor in the aisleway of said tourist car.

II.

If, as plaintiff alleges in her complaint, she accidentally fell from said upper berth, she was careless, reckless and negligent in the following particulars:

- (a) She failed to take any care or precaution for her own safety;
- (b) She failed to button and fasten together the curtains of the berth;

- (c) She permitted or caused said curtains to be parted in such a way as to permit her to fall or depart from said berth;
- (d) She failed to use her senses and faculties so as to avoid injury to herself.

III.

Plaintiff's negligence was the proximate contributing cause of her fall and such injuries as she may have sustained as a result thereof.

Wherefore this defendant having fully answered plaintiff's complaint demands judgment that plaintiff take nothing by reason thereof as to this defendant, that this action be dismissed as to this defendant, and that this defendant have and recover of and from plaintiff its costs and disbursements incurred herein.

HUGH L. BIGGS,
Of Attorneys for Defendant
The Pullman Company.

HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Defendant
The Pullman Company.

[Endorsed]: Filed February 13, 1947. [16]

[Title of District Court and Cause]

REPLY

Comes now the plaintiff and in reply to defendant, The Pullman Company's answer, denies and alleges as follows:

I.

Denies each and every allegation, thing and matter and the whole thereof contained in defendant's answer, excepting such as may be specifically admitted in plaintiff's complaint on file herein.

In reply to defendant, The Pullman Company's affirmative answer and defense plaintiff alleges and denies as follows:

I.

Denies each and every allegation, thing and matter and the whole thereof contained in defendant's answer, excepting such as may be specifically admitted in plaintiff's complaint on file herein.

And in reply to the answer of the defendant, Southern Pacific Company, plaintiff alleges and denies as follows:

I.

Denies each and every allegation, thing and matter contained in defendant's first defense, and the whole thereof.

II.

Denies each and every allegation, thing and matter contained in defendant's second defense and the whole thereof, excepting such as may be specifically admitted in plaintiff's complaint on file herein.

III.

Denies each and every allegation, thing and matter and the whole thereof contained in defendant's third defense.

Wherefore, having fully replied demands that the relief prayed for in the answer of the defendants, and each of them, be denied and plaintiff be granted the relief as prayed for in her complaint on file herein.

RYAN & PELAY,
T. H. RYAN,
Attorneys for Plaintiff.

Service of the foregoing Reply by receipt of a duly certified copy thereof, in Multnomah County, Oregon, on the 19th day of February, 1947, hereby is accepted.

/s/ JOHN GORDON GEARIN,
Of Attorneys for Defendant
Southern Pacific Company.

/s/ HUGH L. BIGGS, c.e.,
Of Attorneys for Defendant
The Pullman Company.

[Endorsed]: Filed March 3, 1947.

[Title of District Court and Cause]

ORDER

Pursuant to stipulation heretofore entered herein and for good cause shown, and the Court being fully advised in the premises,

It is now ordered that a Judgment of Dismissal without prejudice in favor of defendant Southern Pacific Company and against plaintiff be and the same is hereby entered herein.

Dated at Portland, Oregon, this 13th day of June, 1947.

CLAUDE McCOLLOCH,
Judge.

[Endorsed] Filed June 13, 1947. [19]

[Title of District Court and Cause]

PRE-TRIAL ORDER

This cause came on regularly for pre-trial before the Hon. James Alger Fee, Judge of the above entitled court, on July 14, 1947, and was concluded on the date hereof. The plaintiff appeared by Thomas Ryan, her attorney, and the defendant, The Pullman Company, appeared by Manley B. Strayer, of its attorneys.

Based on the proceedings had at said pre-trial hearing

It is hereby ordered as follows:

I.

Simplification of Issues

1. The Pullman Company is a corporation duly organized and existing under the laws of the State of Illinois and licensed and authorized to do business in the State of Oregon. Plaintiff is a resident and inhabitant of the State of Oregon and the matter in controversy, exclusive of interest and costs, exceeds the sum of \$3000.00.

2. At all times referred to herein, Southern Pacific Company operated and maintained a railroad between Los Angeles, California, and Portland, Oregon, and offered to the public passenger service between said points. The defendant, The Pullman Company, during all such times, operated a sleeping car service in conjunction with the passenger service of Southern Pacific Company between [20] Los Angeles, California, and Portland, Oregon, and offered to the public accommodations for sleeping on said trains operated by Southern Pacific Company.

3. The plaintiff is an elderly woman of the age of 61 years. The plaintiff alleges and the defendant denies on information and belief that the plaintiff was unfamiliar with travel on trains and use of sleeping accommodations.

4. On or about the 9th day of January, 1946, plaintiff purchased for a valuable consideration at the Southern Pacific Company ticket office in Los Angeles, California, a railroad ticket on Southern Pacific Company's passenger train from Los Angeles, California, to Portland, Oregon, and a Pull-

man Company berth on the defendant Pullman Company's sleeping car on the Southern Pacific Company's train. Plaintiff contends and the defendant denies that the plaintiff purchased a lower berth accommodation for such trip.

5. On January 9, 1946, plaintiff boarded a Southern Pacific Company train at Los Angeles, California, and traveled by day coach to Martinez, California. At the latter point she boarded Southern Pacific Company's northbound passenger train No. 18, and entered the defendant Pullman Company's tourist car 4199 (KF) attached to said train. Plaintiff was assigned to upper berth No. 14 in said car and entered such berth with the assistance of a porter.

6. Plaintiff contends and the defendant denies that upon entering such car she informed the defendant's conductor and porter that she had purchased a lower berth and that she had never used an upper berth and was not acquainted with the use thereof; that defendant's conductor informed her that her ticket was for an upper berth and that no lower berth was available and that for such reason she accepted the upper berth. Plaintiff contends that [21] there were no curtains on such upper berth and that if there were curtains the defendant's agents failed to close and fasten the same or to equip the berth with protective straps or to inform the plaintiff about the same and the use thereof. The defendant denies such contentions and contends that the berth was equipped with the usual Pullman curtains, securely fastened at top and bottom to rods

secured to the car, which extended the full length of and parallel with the berth; that after plaintiff had retired, an agent of the defendant closed said curtains and that they were so equipped and designed that the plaintiff could readily button and fasten the same from the inside of the berth. These contentions are denied by the plaintiff.

7. During the night of January 9, 1946, after the train had left Red Bluff, California, and was proceeding north, the plaintiff contends that she fell from her berth into the aisle of said Pullman car and that such fall was caused by the negligence of the defendant as hereinafter set forth. The defendant admits that at such time and place the plaintiff, in a manner unknown to the defendant, descended from the berth and was found lying in the aisle of said car, but denies the remainder of such contentions.

8. Plaintiff contends that she fell from her berth and received injuries resulting therefrom as the sole and proximate result of the negligence of the defendant in failing to equip said berth with curtains and protective straps, and to close such curtains and fasten the same; in failing to advise the plaintiff concerning the necessity and manner of properly fastening such curtains; and in requiring plaintiff to take an upper berth after she had purchased a lower berth. The defendant denies such contentions and contends that the plaintiff had no ticket for a lower berth on such car or train; that she had a ticket for an upper [22] berth on a different train; that upon her entering the car in

question the defendant informed her that she was on the wrong train; that no lower berth accommodations were available in defendant's tourist car 4199, and that at the plaintiff's request Defendant agreed to permit her to occupy upper berth No. 14 in such car, which contentions are denied by the plaintiff.

9. As an affirmative defense the defendant contends that any injuries which the plaintiff received were the proximate result of her negligent failure to take any care or precaution for her own safety; failure to button and fasten the curtains of her berth; permitting or causing the curtains to be parted in such way as to permit her to fall or depart from the berth; and failure to use her senses and faculties so as to avoid injury to herself. These contentions are denied by the plaintiff.

10. Plaintiff contends that as a result of such fall she received a fracture of her right femur and a permanent lameness of the right leg; permanent injuries to the muscles, ligaments, tendons and vertebrae of the neck and spine; severe and permanent shock and injury to her nervous system, general bruises, contusions and abrasions and a straining and spraining of the muscles and tendons of the right side; a serious and painful aggravation of a previously existing injury to her right hip and leg and a severe aggravation of a previously slight condition of lameness; that said injuries are severe, painful and permanent, and require her to take sedatives to ease pain and induce sleep; that she

was confined to a hospital and her home for approximately 11 months and had applied to her right leg and thigh a long spica cast, to her damage in the sum of \$37,500.00.

The defendant admits that in some manner unknown to the defendant the plaintiff received an injury to her right leg. [23] The defendant denies on information and belief the remainder of plaintiff's contentions.

11. Plaintiff contends that as a sole and proximate result of the negligence of the defendant she was required to employ the services of physicians, surgeons and nurses, and persons to assist in caring for herself at home; to undergo general hospital treatment and surgical care; purchase drugs, surgical aids and ambulatory aids and to employ ambulances, taxicabs and transportation; that the cost of said treatment, equipment, and transportation has been to date the sum of \$1,400.15. The defendant denies such contention upon information and belief.

II.

Issues

The issues to be disposed of on the trial of this cause are hereby limited as follows:

1. Whether the defendant was negligent in any of the respects alleged by the plaintiff and, if so, whether such negligence was the proximate cause of the injuries received by plaintiff.

2. Whether the doctrine of *res ipso loquitur* applies and, if so, whether the presumption thereunder has been overcome.

3. Whether the injuries received by the plaintiff were in any respect the proximate result of contributory negligence of the plaintiff, as contended by the defendant.

4. The nature and extent of the damages sustained by the plaintiff.

By order
9/29/47
R De

The proximate cause of plaintiff's injury was the failure of defendant's employees to see that the inside buttons on the upper curtain were fastened. This would have kept plaintiff either from falling out or getting out. In plaintiff's crippled and confused condition, which was known to defendant's employees, it was their duty to take all reasonable measures to save her from being harmed.

III.

Documentary Evidence

Exhibits introduced at the pre-trial are contained in [24] the list attached hereto and made a part of this order. All such exhibits were admitted without objection as to competency but each of the parties reserves the right to object to the exhibits at the time of the trial upon the ground that the same are irrelevant or immaterial. No other documents

or factual exhibits, other than those contained in said list, will be used at the trial or offered in evidence.

This order supersedes the pleadings which now pass out of the case. It shall not be amended at the trial except to prevent manifest injustice.

Ordered this 9th day of September, 1947.

CLAUDE McCOLLOCH,
District Judge.

List of Plaintiff's Pretrial Exhibits

1a. to 1L. X-ray films of plaintiff's body. Receipt for bills paid by plaintiff.

List of Defendant's Pretrial Exhibits

3. Deposition of Archie V. Fraser.

4. Deposition of Dr. H. R. McVicker.

5. to 8. Photographs of upper birth No. 14 of a tourist pullman car.

9. Office and working diagrams of pullman car No. 4199.

10. Statement of plaintiff, to be sealed and re-opened and used on the trial for impeachment purposes only.

11. Deposition of plaintiff.

[Endorsed]: Filed September 9, 1947. [26]

In the District Court of the United States
for the District of Oregon

Civil No. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

THE PULLMAN COMPANY, an Illinois corporation,

Defendant

MEMORANDUM DECISION

I find the proximate cause of plaintiff's injury was the failure of defendant's employees to see that the inside buttons on the upper curtain were fastened. This would have kept plaintiff either from falling out or getting out. In plaintiff's crippled and confused condition, which was known to defendant's employees, it was their duty to take all reasonable measures to save her from being harmed. The complaint and pre-trial order may be amended to conform to the proof.

General damages of \$5,500.00 will be allowed and \$1,400.15 special damages.

Dated this 11th day of September, 1947.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed September 11, 1947. [27]

[Title of District Court and Cause]

ORDER

Based upon the Motion of attorney for plaintiff and Memorandum Decision rendered herein, and good cause being shown,

It is hereby ordered, that the amended complaint of the plaintiff on file herein be amended to include the following allegation:

The proximate cause of plaintiff's injury was the failure of defendant's employees to see that the inside buttons on the upper curtain were fastened. This would have kept plaintiff either from falling out or getting out. In plaintiff's crippled and confused condition, which was known to defendant's employees, it was their duty to take all reasonable measures to save her from being harmed.

And further, the pre-trial order on file herein is amended to include the following issue as contended by plaintiff:

The proximate cause of plaintiff's injury was the failure of defendant's employees to see that the inside buttons on the upper curtain were fastened. This would have kept plaintiff either from falling out or getting out. In plaintiff's crippled and confused condition, which was known to defendant's employees, it was their duty to take all reasonable measures to save her from being harmed.

And the said allegations may be deemed denied by defendant.

CLAUDE McCOLLOCH,
Judge.

Dated this 29th day of September, 1947.

[Endorsed]: Filed September 29, 1947. [28]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause having come on regularly for trial before the above entitled Court, the Honorable Claude McCulloch presiding, on the 9th day of September, 1947, the plaintiff appearing in person and by her attorneys, T. H. Ryan and Anthony Pelay, Jr., of Ryan & Pelay, and the defendant corporation appearing by and through its attorney, Manley Strayer of Hart, Spencer, McCulloch & Rockwood, attorneys for the defendant, The Pullman Company, and the Court having heard the testimony and evidence produced by the plaintiff and defendant and having examined the proofs offered by the respective parties, and the Court being fully advised in the premises, the Court finds the following facts:

I.

That The Pullman Company is a corporation organized and existing under the laws of the State of Illinois and is authorized and licensed to do business in the State of Oregon.

II.

That The Pullman Company maintained and operated a sleeping car service in conjunction with the Southern Pacific Railroad Company's passenger service between Los Angeles, California, and Portland, Oregon. [29]

III.

That on or about the 9th day of January, 1946, the plaintiff was a paying passenger on the defendant's (The Pullman Company) said sleeping car service between Los Angeles, California, and Portland, Oregon, having purchased from said defendant a ticket for valuable consideration.

IV.

That on or about the 9th day of January, 1946, the plaintiff was injured by a fall from the upper berth occupied by and assigned to her by the defendant on defendant's (The Pullman Company) sleeping car.

V.

That plaintiff is an elderly woman not familiar with travel on sleeping cars and was in a confused and crippled condition, and the defendant (The Pullman Company) was aware of her condition and inexperience.

VI.

That it was a reasonable precaution and a legal duty of the said defendant (The Pullman Company), under the circumstances attendant at the time of this accident, to see that the safety of the plaintiff was safeguarded while in her berth and to see that the inside buttons on the upper curtain of the plaintiff's berth were fastened and secured; that said defendant (The Pullman Company) failed to fasten said buttons and thus to safeguard plain-

tiff while in said berth on said pullman sleeping car; and that by reason thereof defendant (The Pullman Company) was negligent and as a sole and proximate result thereof plaintiff suffered injury and damage.

VII.

That the sole and proximate cause of the plaintiff's injury was the negligence of defendant (The Pullman Company) as aforesaid in failing to see that the inside buttons on the said upper curtains were fastened. This would have kept plaintiff from [30] either falling out or getting out of said upper berth. In plaintiff's crippled and confused condition, which was known to defendant (The Pullman Company), it was the defendant's (The Pullman Company) duty to take all reasonable measures to save her from being harmed.

VIII.

That plaintiff was not guilty of any contributory negligence.

IX.

That by reason of the aforesaid facts plaintiff has suffered general damages in the sum of \$5,500.00 and special damages in the sum of \$1286.50 and is entitled to costs taxed at \$37.50.

As conclusions of law from the foregoing facts, the plaintiff is entitled to a judgment against the defendant, The Pullman Company, in the sum of \$5,500.00 general damages and \$1286.50 as special

damages, and for her costs and disbursements herein incurred taxed at \$.

/s/ CLAUDE McCOLLOCH,

Judge.

Dated this 4th day of October, 1947.

[Endorsed]: Filed October 4, 1947. [31]

In the District Court of the United States
for the District of Oregon

Civil No. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
corporation, and THE PULLMAN COM-
PANY, an Illinois corporation,

Defendants.

JUDGMENT

This action coming on to be heard on the 9th day of September, 1947, before the above entitled Court, Honorable Claude McCulloch presiding, the plaintiff appearing by and through her attorneys T. H. Ryan and Anthony Pelay, Jr., of Ryan & Pelay, and the defendant (The Pullman Company) appearing by and through its attorney, Manley Strayer of Hart, Spencer, McCulloch & Rockwood.

Evidence and testimony having been taken by both parties and arguments having been made by

respective counsel, the Findings of Fact and Conclusions of Law having been filed, and it further appearing that from the evidence that plaintiff was entitled to a judgment against defendant, The Pullman Company, in the sum of \$5,500.00 general damages and \$1286.50 special damages, and for her costs and disbursements herein incurred taxed at \$37.50.

Now therefore, it is hereby ordered that plaintiff take judgment against the defendant (The Pullman Company) in the sum of \$5,500.00 general damages and \$1286.50 special damages, and for her costs and disbursements herein incurred taxed at \$.....

/s/ CLAUDE McCULLOCH,
Judge.

Dated this 4th day of October, 1947.

Filed and entered in docket October 4, 1947.

[Endorsed]: Filed October 4, 1947. [32]

[Title of District Court and Cause.]

MOTION TO AMEND
FINDINGS OF FACT

Defendant, The Pullman Company, moves the court to amend its findings of fact and conclusions of law heretofore filed herein in the following particulars:

1. Striking out the finding of fact that it was a reasonable precaution and a legal duty of the said defendant (The Pullman Company), under the circumstances attendant at the time of this accident, to see that the safety of the plaintiff was safeguarded while in her berth.
2. Making the following additional findings of fact:
 - (a) That at the time and place of the accident the berth occupied by plaintiff was equipped with the usual Pullman curtains, securely fastened at the top and bottom to rods secured to the car, which extended the full length of and parallel with the berth.
 - (b) That after the plaintiff had retired the defendant, The Pullman Company, closed said curtains.
 - (c) That said curtains were so equipped and [33] designed that they could readily be buttoned and fastened from inside the berth, but could not be readily fastened from outside of the berth.

M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Defendant,
The Pullman Company.

To Maggie Mae Teutschman, plaintiff above named,
and to T. H. Ryan and Anthony Pelay, Jr., her
attorneys:

You are hereby notified that the foregoing motion will be heard before the United States District Court on Monday, October 27, 1947, at the hour of 10:00 o'clock a.m.

M. B. STRAYER,
Of Attorneys for Defendant,
The Pullman Company.

Due and legal service of the within Motion to amend Findings of Fact is hereby admited at Portland, Oregon, this day of October, 1947.

RYAN & PELAY,
Of Attorneys for Plaintiff.

[Endorsed] Filed October 14, 1947. [34]

[Title of District Court and Cause.]

MEMORANDUM ON MOTION TO
AMEND FINDINGS OF FACT

The motion to amend the findings is denied except as to 2(a). That part of the motion is allowed and the findings may be deemed amended accordingly.

Dated November 20, 1947.

CLAUDE McCULLOCH,
Judge.

[Endorsed]: Filed November 20, 1947. [35]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that The Pullman Company, an Illinois corporation, one of the defendants above named, appeals to the Circuit Court of Appeals for the Ninth Circuit from the judgment made and entered in the above entitled court and cause on or about October 4, 1947, and from each and every part of said judgment.

M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for defendant,
The Pullman Company.

[Endorsed]: Filed December 17, 1947. [36]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT WILL RELY ON APPEAL

The defendant, The Pullman Company, having filed its notice of appeal from judgment of this court to the Circuit Court of Appeals for the Ninth Circuit, and having designated portions of the record herein to be contained in the record on appeal, hereby files its statement of the points upon which it intends to rely upon appeal as follows:

1. The court erred in denying this defendant's motion to dismiss made at the close of the evidence in the case upon the grounds stated therein.

2. The court erred in finding that the defendant, The Pullman Company, was negligent.

3. The court erred in finding that negligence of the defendant, The Pullman Company, was the proximate cause of plaintiff's injuries.

4. The court erred in failing to find that the plaintiff was guilty of contributory negligence.

5. The court erred in permitting amendments to the amended complaint and pretrial order after the cause had been submitted.

M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for defendant,
The Pullman Company.

[Endorsed]: Filed January 7, 1948. [37]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS
OF RECORD ON APPEAL

Defendant, The Pullman Company, having filed its notice of appeal from the judgment of this court to the Circuit Court of Appeals for the Ninth Circuit, hereby designates the following portions of the record and proceedings in this case to be contained in the record on appeal:

1. Transcript of removal proceedings from Circuit Court of Multnomah County, State of Oregon, to this court (including petition for removal, order of removal and other documents pertaining to such removal.)

2. Amended complaint.
3. Answer of defendant, The Pullman Company.
4. Reply.
5. Order of dismissal as to the defendant, Southern Pacific Company.
6. Pretrial order.
7. Transcript of testimony and proceedings at the trial, including all exhibits received in evidence and depositions of Dr. H. R. McVicker, Archie V. Fraser and Maggie Mae Teutschman.
8. Memorandum decision dated September 11, 1947.
9. Order dated September 29, 1947, to amend pretrial order and amended complaint.
10. Finding of fact and conclusions of law, showing date of entry thereof. [38]
11. Judgment dated October 4, 1947, showing date of entry thereof.
12. Motion to amend findings of fact, showing date of filing thereof.
13. Court's order on motion to amend findings of fact dated November 20, 1947, showing date of entry thereof.
14. Notice of appeal to Circuit Court of Appeals, with date of filing thereof.
15. Statement of points upon which appellant will rely on appeal.

16. Designation of contents of record on appeal.
17. Order to send original exhibits.

M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,

Attorneys for defendant and appellant, The Pullman Company.

[Endorsed]: Filed January 7, 1948. [39]

[Title of District Court and Cause.]

ORDER

On motion of defendant, The Pullman Company, it is ordered that the clerk of this court forward to the Circuit Court of Appeals for the Ninth Circuit, in connection with the appeal of the above-entitled case, all original exhibits in accordance with the usual practice of this court in regard to the safe-keeping and transportation of original exhibits.

Dated at Portland, Oregon, this 19th day of January, 1948.

CLAUDE McCOLLOCH,
District Judge.

[Endorsed]: Filed Jan. 19, 1948. [40]

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

- Feb. 12 Filed transcript on removal from Multnomah Co.
- Feb. 12 Filed answer of deft. Southern Pacific Co.
- Feb. 13 Filed answer of deft. Pullman Company.
- Feb. 24 Entered order setting for trial on April 22, 1947, notices, McC.
- Feb. 28 Entered order resetting for trial on May 13, 1947, notices, McC.
- Mar. 3 Filed reply of plaintiff.
- Mar. 5 Entered order resetting for trial on June on June 3, 1947, notices, McC.
- Mar. 20 Filed Deposition of Maggie Mae Teutschman.
- May 15 Entered order resetting for trial on June 17, 1947, notices, McC.
- June 3 Filed request for a jury.
- June 4 Filed affidavit.
- June 3 Filed and entered order permitting filing of amended complaint. McC.
- June 3 Filed stipulation for order permitting filing of amended complaint.
- June 3 Filed motion for order permitting filing of amended complaint.
- June 3 Filed amended complaint.
- June 3 Entered order canceling trial date, notices, McC.

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- June 13 Filed stipulation for order of dismissal as to Southern Pacific Co.
- June 13 Filed and entered order of dismissal as to Southern Pacific Co., notices, McC.
- July 7 Entered order setting for pretrial for July 14, 1947. Fee.
- July 14 Entered order setting for P. T. Conference Tuesday, Sept. 2, 1947, and for trial Tuesday, Sept. 9, 1947. Fee.
- July 28 Filed stipulation for depositions.
- Sept. 2 Filed Deposition of Dr. H. R. McVicker.
- Sept. 2 Filed Deposition of Archie V. Fraser.
- Sept. 3 Entered order striking from trial calendar, notified McC.
- Sept. 5 Entered order resetting for trial on Sept. 9, 1947 (trial by court), notified McC.
- Sept. 9 Record of trial before court; order to open sealed exhibit No. 10; argument on merits and order taking under advisement. McC.
- Sept. 9 Filed and entered pre-trial order. McC.
- Sept. 10 Filed trial exhibits 1 to 5, 5½ to 13, inc. (in file) P. T. ex in J-3.
- Sept. 11 Filed memorandum decision (4 ptff) copies at attys. McC.
- Sept. 29 Filed and entered order to amend pretrial order and amended complaint. McC.
- Sept. 29 Record of hearing in settlement of Findings of Fact and Conclusions of Law. McC.

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- Sept. 23 Filed motion to amend complaint and pre-trial order.
- Oct. 4 Filed and entered Findings of Fact and Conclusions of Law, notices, McC.
- Oct. 4 Filed and entered Judgment for plaintiff for \$5,500 general damages and 1286.50 special damages and costs.
- Oct. 4 Filed cost bill.
- Oct. 6 Entered judgment in Lien Docket.
- Oct. 14 Filed Pullman Co.'s motion to amend findings of fact.
- Oct. 24 Filed Notice to tax costs. [41]
- Nov. 10 Entered order amending motion to amend "Findings of Fact and record of hearing on motion to amend Findings of Fact—argued and submitted. McC.
- Nov. 20 Filed memorandum on motion to amend Findings of Fact.
- Dec. 11 Filed transcript of proceedings.
- Dec. 17 Filed The Pullman Co.'s notice of appeal.
- Dec. 17 Mailed copy of notice of appeal to Attys. Ryan & Pelay.
- Dec. 18 Filed stipulation re bond.
- Dec. 18 Filed bond for costs on appeal.
- Dec. 18 Filed and entered order approving bond. McC.

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- Jan. 7 Filed statement of points.
- Jan. 7 Filed designation of contents of record on appeal.
- Jan. 7 Filed transcript of proceedings in duplicate.
- Jan. 19 Filed motion for order to transmit original exhibits.
- Jan. 19 Filed and entered order to transmit original exhibits. [42]
-

United States of America,
District of Oregon—ss.

CERTIFICATE OF CLERK

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 43, inclusive, constitute the transcript of record on appeal from a judgment of said court in a cause therein numbered Civil 3460, in which Maggie Mae Teuschman is plaintiff and appellee, and the Pullman Company is defendant and appellant; that the said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellant, and in accordance with the rules of court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct

transcript of the record and proceedings had in said court in said cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

I further certify that I have enclosed under separate cover a duplicate transcript of proceedings of September 9, 1947, taken and filed in this office in this cause, together with exhibits Nos. 1, 2, 3, 4, 5, 5½, 6, 7, 8, 9, 10, 11, 12 and 13, filed in this cause.

I further certify that the cost of comparing and certifying the within transcript is \$25.50, and the cost of filing the notice of appeal is \$5.00, making a total of \$30.50, and that the said has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 21st day of January, 1948.

[Seal]

LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy. [43]

In the District Court of the United States
for the District of Oregon
Civil No. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
Corporation, and THE PULLMAN COM-
PANY, an Illinois Corporation,
Defendants.

Portland, Oregon, September 9, 1947. A.M.

Before: Honorable Claude McColloch, Judge.

Appearances:

Mr. Thomas H. Ryan, Attorney for Plaintiff.

Mr. Manley B. Strayer (Hart, Spencer, McCul-
loch & Rockwood), of Attorneys for The Pullman
Company.

TRANSCRIPT OF PROCEEDINGS OF TRIAL

The Court: I have read the pleadings and depo-
sitions, so, call our witnesses unless there is some-
thing special to be said.

Mr. Strayer: We started the pre-trial before
Judge Fee but it was not completed. We had gotten
to the point where [1*] we had prepared a pre-trial
order which was satisfactory to both parties. I won-
der if your Honor would care to examine the order?

The Court: Do you want to be heard on it, Mr.
Strayer?

Mr. Strayer: In the pre-trial order there is a

*Page numbering appearing at top of page of original Reporter's
Transcript.

blank in the top paragraph on page 5 covering the amount of special damages. I believe Mr. Ryan has the figures on that now which he can give to your Honor.

Mr. Ryan: \$1400.15.

The Court: The Clerk will put that in. I notice there has been no answer to the amended complaint.

Mr. Strayer: I think we can stipulate that the answer to the original complaint may be deemed an answer to the amended complaint. Wasn't that in the stipulation attached to the amended complaint?

Mr. Ryan: I understood there was a stipulation but I did not understand it was in the record.

The Court: It may be recorded now. Go ahead.

PLAINTIFF'S TESTIMONY

Mr. Ryan: We will call the plaintiff, Mrs. Teutschman.

MAGGIE MAE TEUTSCHMAN

the plaintiff herein, produced as a witness in her own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Mrs. Teutschman, you are the plaintiff in this case? A. Yes, sir.

Q. How old are you?

A. I will be sixty-three next month.

Q. What is your occupation?

A. Housewife, right now.

Q. How long have you been so employed?

A. Well, ever since I have been married, now, for the last thirty years.

(Testimony of Maggie Mae Teutschman.)

Q. Did you ever do any kind of work?

A. Yes, I worked in the Porter Building ten years.

Q. When did you quit working there?

A. I quit working there about six or seven years ago.

Q. Why did you quit working there?

A. I got an apartment house. My husband got a steady job and then I got the apartment house so I said he might take care of the apartment house and then he did extra jobs around, extra [3] work.

Q. At the time of this accident, were you taking care of this apartment house, too? A. Yes.

Q. That is where your husband and you reside?

A. Yes.

Q. Your work as housewife included taking care of this apartment house and keeping the place up?

A. Yes.

Q. At the time of the accident, what was the condition of your health?

A. I had perfect health—I have, all my life; never had nothing but perfect health.

Q. You said at one time you had an injury to your right hip?

A. It wasn't exactly the hip, here. It was in the groin. I was hurt with a vacuum cleaner, when a vacuum cleaner struck me.

Q. What was the result of that injury? How did it heal up?

A. It kind of caused an abscess, you know. Then, the doctor lanced the abscess, and then it was one of those kind of abscesses that they claim you can

(Testimony of Maggie Mae Teutschman.)

have a lifetime; they never could completely heal it; they will always have a lot of drainage. It does not affect your health in any way, but it is just something that is a kind of a little—there is a kind of a little drainage all the time but nothing serious at [4] all. People have them for eighty years or something like that.

Q. You have had it then for some time?

A. I had it sixteen years, yes.

Q. Did it cause you to limp?

A. Very little. I think when I did limp was just more of a habit. If I would think what I was doing, I would walk the same as I always did, but the thing was noticeable——

Q. Did it interfere with your work?

A. No; heavens, no.

Q. Did you work at the Porter Building after that accident?

A. Yes, I worked four years on the same job after I was hurt.

Q. Doing janitorial work?

Q. Did that work require you to bend?

A. The same work I was doing when I got hurt.

A. Everything, just the same as I was doing before. I did it four years afterwards.

Q. When did you go down to Los Angeles?

A. I went down to Los Angeles the 23rd day of September.

Q. What was the purpose of visiting Los Angeles?

A. Went to visit my sister. She has been married twenty-seven years and they had made a visit

(Testimony of Maggie Mae Teutschman.)

here, her and her husband was up here in their big car, and I had not had a vacation for the last thirty years and I went more on a vacation and for a visit.

Q. How did you drive down, in that car with them?

A. Yes, rode down there in their car. [5]

Q. How long did you stay down there?

A. Stayed down there until the 9th day of January.

Q. Did you take any treatments down there?

A. I took penicillin shots, because my sister was doctoring with a good doctor that was using these penicillin shots altogether, and my sister was persistent that I should try it, so I tried the penicillin shots.

Q. Had you been taking any treatments before you went down to Los Angeles for this leg?

A. No.

Q. You had not been taking any treatments until you went down to Los Angeles, since just before this accident?

A. No.

Q. It had not been giving any real trouble?

A. No.

Q. How many treatments did you take from this doctor down in Los Angeles?

A. I think there was 140 penicillin shots taken. They have a regular course and when you start in you are supposed to take the course.

Q. Did they clear up your condition?

A. Well, it was—the drainage had already dried up and the doctor said that is the only way you could tell, if it is going to heal up, you know, by the

(Testimony of Maggie Mae Teutschman.)

drainage, so when I left down there I didn't have any drainage in that place at all. [6]

Q. Did this condition of your leg give you any trouble since the happening of the accident?

A. No, didn't suffer with it.

Q. Just an inconvenience?

A. Just an inconvenience.

Q. Was that because of your slight limp?

A. Well, yes, I guess it was.

Q. You kind of favored it?

A. Yes, kind of favored it, you know.

Q. Favored it more when you were tired?

A. Well, I practically did not limp to amount to anything. The limping did not amount to much.

Q. Mrs. Teutschman, you tell the Court, now, just what you did the day you got the ticket to go to Portland.

A. Well, my sister was sick and couldn't go with me. I went alone and when I went up to the office it was pretty near closing time and, so, I told the woman in there that I wanted a ticket with a lower berth. She didn't seem to understand. She seemed to be a new woman in there. She would go around asking first one and another and, finally, she got me fitted up—

Q. Talk up. The Judge can't hear you.

A. I insisted on a lower berth and, as far as I know, she had assigned me to a lower berth, so I took my ticket and went—just put it in my hand-satchel, so I went back and went to bed because I had to get up early the next morning to catch the

(Testimony of Maggie Mae Teutschman.)

[7] train at 8 o'clock; in fact, paid no attention to the ticket. My sister was sorry she did not pay any attention to it.

Q. You did not look at the ticket after you got it?

A. No, I didn't look at the ticket after I got it.

Q. As I understood you, you bought a ticket from Los Angeles to Portland, but you only bought a Pullman ticket for that evening, isn't that the way you did it?

A. No, I think I bought it straight through to Portland.

Q. A Pullman straight through to Portland?

A. Yes.

Q. Did you have to change trains en route?

A. Yes, changed trains. That is as far as that train went; it was the end of the destination of that train; that is as far as it went; everybody, all passengers had to get off the train.

Q. You bought a Pullman ticket all the way through to Portland? But you had to change cars at this station? A. Yes.

Q. You do not know what the name of the station is? A. No.

Q. Tell the Court what you did when you changed cars?

A. When I changed cars, they all went over to the depot and stayed there and waited until the train that was supposed to take us came.

Q. That was what time in the evening?

A. Well, I don't know; couldn't say what time. As near as I [8] can remember, it was around about

(Testimony of Maggie Mae Teutschman.)

9 o'clock or something like that, I think. I didn't pay any attention.

Q. 9 o'clock when you got off the train?

A. Yes.

Q. How long did you wait there at the station?

A. Well, it was an hour and a half or close on to two hours, as I remember it. It was quite a little wait; I know we had to stay there and wait.

Q. Then you got on the train? A. Yes.

Q. The train that you had the accident on?

A. Yes.

Q. How did you happen to get on that train?

A. Well, they said that was the train we were supposed to get on. All the other passengers got off the other train and got on.

Q. Who said that?

A. Well, when I got off the train, why, the Pullman—the man on the train he said, “Here the train comes.”

Q. That was the Pullman man on the other train? A. Yes.

Q. He told you to take this train?

A. Yes, supposed to take this next train, the first train that came, so everybody went out there together to get on that train. I supposed it was the train we were supposed to get on. [9]

Q. Tell the Court just what happened when you started to get on that train.

A. I went down to the front end of the train and the conductor looked at me and said, “Here,” he said, “you have to go back to the back end to where

(Testimony of Maggie Mae Teutschman.)

that conductor is up there," so I walked back to where the conductor was up there and there was a porter standing down there to help me up but the conductor said—the conductor wasn't going to let me on the train, so I said, "I don't know why." I said, "I have got my ticket and everything," and he said to the porter, "Let her on there, then," so the porter helped me up onto the train.

Q. Then what happened?

A. Then I went in there, then. The conductor came in, and they only had an upper berth for me. I told the conductor I didn't want no upper berth; I was supposed to have a lower berth, and my sister had told me not to take an upper berth, and I said, "I ain't supposed to go up in that upper berth," and he said, "Well, that is the only thing there is." So, it wasn't made up and the porter, he was making it up and I stood there and talked with the conductor. I didn't want to go up in that berth. so then the conductor—the porter got the bed made up and he said, "All right," so the conductor said, "You go over there and the porter will take care of you," so I went over, and he had a little ladder up there and helped me up into the bed, and then he went. I never seen anything more of him. [10]

Q. Why didn't you want to get up in the upper berth?

A. Because my sister's husband is a railroad man and they have rode on trains lots. I don't know why, but she always insisted on having a lower berth.

(Testimony of Maggie Mae Teutschman.)

Q. Had you ever ridden on a train before?

A. I never had seen an inside of a sleeper before.

Q. You had never been in a Pullman or sleeper before? A. Never had seen one, no.

Q. Did you explain that to the porter?

A. Yes, I told him, "This is all Greek to me." I said to the porter I never had any idea in the world how this is in here, this is the first time I was ever in one of these places, and I still insisted to him I did not want to get up on that ladder into that high berth.

Q. Did he say anything to you?

A. He never spoke to me.

Q. Never said a word to you?

A. He never spoke to me.

Q. Was the conductor there when you got into the berth?

A. No, I didn't see the conductor.

Q. Did anybody tell you anything about the use of the upper berth? A. Not one word.

Q. Was the berth made up when you got on the train?

A. No, it was not. He made it up while I was standing there. [11]

Q. Did he pull the thing down, or was it already down? A. What?

Q. You know how an upper berth folds up?

A. I don't know a thing about it. I don't even—I don't know anything about that upper berth. I don't know whether they fold up or what they do.

(Testimony of Maggie Mae Teutschman.)

Q. Do you know if the berth was up when you got in the car? Did you notice that?

A. No. I don't know if it was folded or not.

Q. You said something in your deposition about somebody being in the berth?

A. Yes. There was a man, I am sure, come down out of that berth when I was standing there. He came walking right straight up and walked past us and went on out.

Q. If a man got out of the berth, it would have had to have been down?

A. I suppose it would. I don't know. I don't know how those berths worked. I couldn't say, because I don't understand them things.

Q. You know he made it up?

A. Yes, I know, because I had to stand there at his back and wait until he made it up.

Q. Was there quite a bit of confusion? You were pretty mad, weren't you?

A. Yes, I was mad, and I was scared to get away up in that high place.

Q. You objected to both the porter and the conductor? A. I did. I told them——

Q. The porter went ahead and made up the berth while you were talking? A. Yes.

Q. What did you do after you got up in the berth?

A. Well, I just slipped off my slippers and my hat. That is all I could do and I just laid down with all my clothes and everything on; just took off my slippers and hat and laid down.

(Testimony of Maggie Mae Teutschman.)

Q. Were there any curtains?

A. I never seen no curtains.

Q. Did the porter pull any curtains?

A. He didn't.

Q. Did he say anything to you about them?

A. He never mentioned a thing, never one time.

Q. He walked away, did he?

A. He didn't speak to me; just put up the ladder and, when I got up in the berth, he walked away. I never saw him again until two hours or so later.

Q. There was no cloth or webwork there?

A. There was nothing. I seen the rest of them had curtains and I wondered then where in the world all the rest of them got their curtains and how come I couldn't get any. I noticed the rest of them had them but I didn't have any. [13]

Q. How long was it before you went to sleep?

A. I couldn't say just exactly how long but I don't think very long. I fell asleep and—I don't know; I probably slept an hour and a half, something like that; couldn't say how long. When I woke up, I was thirsty. I had eaten a big dinner and my sister had fixed me a big lunch. I woke up and I was thirsty and wanted a drink.

I didn't know how I was supposed to get a drink, so I saw a little bell on the side of the wall and I pushed that little bell and then the porter came and I asked him if I couldn't have a drink of water and he went back there and he fetched me a little cup with water, and he just handed it to me and went.

(Testimony of Maggie Mae Teutschman.)

He never spoke to me and I didn't speak to him. Had a drink of water and laid back again and went to sleep.

Q. Were the curtains drawn when the porter came there? A. No.

Q. You were pretty tired out?

A. Yes— Well, I was tired. I had been on the other train since 8 o'clock.

Q. You had not taken your clothes off in that time?

A. No. There was nothing there to hide me.

Q. Then what happened?

A. I laid back there, and I was flat on my back, just like laying on this table. I was laying on my back. I just woke up and when I woke up I kind of raised my head and the next [14] thing I hit the floor.

Q. Was there anything there to stop you from rolling out of the berth?

A. Absolutely nothing, no more than this table.

Q. You were not trying to get out of the berth or anything?

A. No, I didn't even raise up. I just woke up and, as I went to raise my head up, the next thing I knew I hit the floor.

Q. Tell what happened after you hit the floor?

A. After I hit the floor, I don't know whether I was knocked out or not; couldn't say about that but, anyway, I was laying there, trying to raise my shoulders up, trying to get up, and the porter came along and he had his flashlight in his hand and he said, "What did you do? Fall out of bed?"

(Testimony of Maggie Mae Teutschman.)

I said, "Yes, I fell out of bed," so he came over to me and knelt down by me. He was starting to raise me up by the shoulders and just about then the porter came running up to him and the porter was starting to try to lift me up, and I passed out. I don't know when they carried me out, then. I didn't know anything more.

The next time I came to any at all was when they was taking me off the train at Redding. I just barely realized that they was moving me around and taking me down some steps. I realized that and I heard a man say, "We will just put her in here." I realized I was riding in something, but wasn't enough out to know what was going on. I realized when the rig stopped; [15] I heard a lady say, "Well, I will rush back quick," and I guess they held the train while the lady went with me, and then I passed out again. I didn't know anything——

Q. You passed out a second time? A. Yes.

Q. You woke up in a hospital, did you?

A. I woke up when they was going to the X-ray place.

Q. That was the first time you knew you had a broken leg?

A. Yes. I began to holler. I asked them why they had hurt my leg and the nurse said, "Don't you know you have got a broken leg?" And I said, "No." And she said, "You have."

Q. Who treated you in Redding?

A. Didn't anybody.

(Testimony of Maggie Mae Teutschman.)

Q. You had a doctor down there?

A. I was supposed to have one but he didn't do nothing. All he done was give me hypos. He never touched me.

Q. How long were you in the hospital at Redding?

A. Was there four days.

Q. And then you came up to Portland?

A. Yes.

Q. Your husband came down and took you up to Portland?

A. Yes, he come down. He thought that he was going to take me to a railroad hospital in Los Angeles. They had sent him word here they was moving me and taking me to San Francisco, so he bought a ticket straight through to San Francisco, and [16] then the next day, my sister—I told her he was coming and she said, "Heavens, I have got to meet that train and head him off," so she went down to the train and headed him off.

Q. Then he brought you back up to Portland?

A. Yes.

Q. Who treated you in Portland?

A. Dr. Thatcher.

Q. That is Dr. H. Thatcher?

A. I don't know what his first name is.

Q. He is with Dr. Blair, is he not?

A. Yes.

Q. Tell the Court what Dr. Thatcher did for you.

A. They got me in the hospital about 7 o'clock in the evening——

(Testimony of Maggie Mae Teutschman.)

Q. Don't go into too much detail.

A. The next morning, Dr. Thatcher—they took me up and put me out and Dr. Thatcher set my leg. He had to peg my leg—he drove a peg clear through the bone of my leg, clear through the bone.

Q. Down by your knee?

A. Between the knee and ankle. You can see the scar on both sides where it went in. He had to drive a peg clear through there, and then they had to put me up on a kind of a little ladder, my leg; then they had to put a frame up of some kind with a heavy weight at the end here.

Q. They had your leg in traction?

A. Yes, about six weeks that they had weights pulling on my leg.

Q. I thought you told me yesterday it was less than eight weeks?

A. No, that I was in the hospital.

Q. You were in traction, then, for six weeks?

A. Yes.

Q. And were in the hospital for three days less than eight weeks?

A. They took me down from there and put me in a whole body cast.

Q. How long were you in that body cast?

A. I was in there two months.

Q. A part of that time you were at home?

A. Yes.

Q. Did you have a nurse while you were at home?

(Testimony of Maggie Mae Teutschman.)

A. I had a practical nurse, yes, because there had to be somebody with me every minute of the day and night.

Q. After you got out of the body cast, how long was it before you could get up and around?

A. Oh, it was—I don't know just how long, but it was a long time. It has been about a year that I went around on one crutch; couldn't hardly get around at all or get any rest or anything, and they got me a wheelchair and I went around in the house on a wheelchair for a long time.

Q. For over a year, then, you had to go around on crutches or [18] in a wheelchair?

A. Oh, yes.

Q. How long has it been since you were able to get around on one crutch?

A. Been going with one about three months.

Q. Does it seem to get any better?

A. No, it don't. I walk a little bit on my leg and then it gives way and I am right back—worse than ever. Don't seem to get any strength in that leg.

Q. Do you have any trouble dressing?

A. Yes. I can't dress myself. I can't bend my leg. My husband has to wake me up about 5 o'clock in the morning, before he goes to work, and put on my stockings and my underwear and then—or else I have to ask someone over to do it, or else go without any. It is impossible. I can't put them on. I can't take a bath by myself. I can't do nothing. I am in bed more time than I am up. I go around

(Testimony of Maggie Mae Teutschman.)

trying to do a little work and then lay down. I get up a while and then lay down because I can't be on my leg very long.

Q. You don't think you are getting much better?

A. No, I can't see that I am.

Q. What other injuries did you sustain than the injury to your knee?

A. The bone in my foot was broken. I suffer with that about as much as in my knee, and then the place where he pegged it, I suffer terrible with that. My whole leg, clear down where he pegged it to my foot pains me terrible.

Q. What about any injuries to the other parts of your body?

A. My back right here is hurt. I don't know——

Q. When you say "right here" tell where.

A. Well, it is right on the ribs. I don't know if it is the ribs. Dr. Thatcher, he can tell you. I told him one day, and he said, "Well, I just wouldn't worry about it" so I guess there can't be nothing done about it. I sure do suffer with it.

Q. Do you have any other injuries?

A. Yes, my neck is hurting. I just suffer all the time, steady, day and night from pain in my neck and head; just a dull hurt in my head all the time.

Q. Does your head ache?

A. Yes. Sometimes—my whole body just aches, not only just the pain in my neck and head.

Q. Ever take pills or anything for that condition?

(Testimony of Maggie Mae Teutschman.)

A. No, don't take nothing. Dr. Thatcher told me to take some pills when it got so I couldn't stand it any other way, and, once in a while, I take aspirin, but that is all.

Q. How is this pain in your back? About the same?

A. Yes, it pains me all the time; just suffer with it all the time.

Q. How about your headaches? Are they getting less severe?

A. No, just a steady hurt, aching in my head all the time, and my neck, it seems to move different places, like on a pivot; it just moves around and I haven't much control of it until it seems to get back in place again.

Q. Do you know how much your doctor bills amounted to? Dr. Thatcher's bill?

A. Yes, I have it wrote down.

Q. You have that all written down?

A. Yes.

Q. Do you have that with you?

A. Yes, I think I have it with me. I wrote them off the bills.

Mr. Strayer: Are these bills that have been paid?

Mr. Ryan: I don't know whether have all been paid or not.

A. No, they are not.

Q. I will show you Plaintiff's Identification No. 1.

A. This is Dr. Thatcher's.

(Testimony of Maggie Mae Teutschman.)

Q. Yes, that is it.

A. That is it, four hundred. That is right. That is the bill he sent me.

Q. That is for services rendered as a result of this accident? A. Yes.

Q. I will show you Plaintiff's Identification No. 2, this bill of St. Vincent's Hospital. Is that the hospital bill, St. Vincent's Hospital? A. Yes.

Q. \$518? A. Yes.

Q. That is your final statement? A. \$518.

Q. You got several bills from St. Vincent's Hospital? A. Yes.

Q. The hospital bill is for all the time you were there in connection with these injuries?

A. Yes.

Q. That is \$518? A. Yes.

Q. You expended certain moneys for ambulances, did you not?

A. Yes. When I was in the body cast at home, there was a sharp corner right on my hip which just dug right into my hip and I was so sore with it that Dr. Thatcher ordered him to get a taxicab and take me up to the hospital and he just took me many times to the hospital and have the doctor try to skin some of that off.

Q. Do you know how much was spent for those bills?

A. \$48 for the ambulance. We had to pay the ambulance to take me over.

Q. \$48 for the ambulances, altogether?

A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. I understood it was \$70 for ambulances?

A. Well, it was. We had to pay the ambulance to take me there.

Q. Altogether it was \$70?

A. Yes, altogether.

Q. You do not have receipts for a lot of those bills?

A. No.

Q. I show you what receipts we have here (Plaintiff's Identification No. 3). Those are the bills you paid, are they not?

A. Yes, they are. Buck Ambulance Company, that is the one we always had. That is my signature on there.

Q. You did not get any receipts from the taxicabs?

A. No. Spent a lot of money for taxis because up until the last month or so I had to have a taxi to get wherever I went. I couldn't ride the bus.

Q. What was your hospital bill at Redding? What was the hospital bill at the Redding Hospital? I can show you this (Plaintiff's Identification No. 4).

A. Yes. That was \$58.

Q. \$58?

A. Yes.

Q. You also got a wheelchair, did you not?

A. Yes. He tried to get me so I could go around in the house and go out on the front porch in a wheelchair.

Q. Is this the bill for the wheelchair (Plaintiff's Identification No. 5)?

A. Yes, that is it.

Q. How much did you pay the doctor at Redding?

(Testimony of Maggie Mae Teutschman.)

A. Paid him \$10, but that was not the railroad doctor. [23]

Q. You paid your own doctor \$10?

A. Yes. I paid him to fix my leg up so I could travel with it from Redding to Portland.

Q. You have no receipt for that?

A. No. He didn't give me no receipt.

Q. How much did you pay your nurse?

A. \$200 altogether.

Q. You do not have a receipt for that?

A. Golly, I have got one at home but I didn't bring it with me.

Q. How long did she work there?

A. She worked there for over two months.

Q. And you paid her \$200? A. Yes.

Q. In addition to that, you spent some money for medicines? A. Yes.

Q. Do you know how much that was?

A. No. We had bills for all of those things—it is \$14.15.

Q. \$14.15? \$14.15 for medicines?

A. Yes.

Q. You spent \$10 for fixing a bell so you could ring a bell and get a nurse?

A. Yes, we had to have a special fixture on there so I could get her in a minute.

Q. Your husband went down to Redding to bring you home? A. Yes. [24]

Q. How much did he spend going down and your fare home?

(Testimony of Maggie Mae Teutschman.)

Mr. Strayer: Objected to as immaterial, your Honor.

The Court: Sustained.

Mr. Ryan: Is there any objection to the reasonableness of the charges?

Mr. Strayer: No, I think not.

Mr. Ryan: Is there any objection to the introduction of these exhibits in evidence?

Mr. Strayer: No.

The Court: They may be received.

(Statement of Dr. H. Thatcher for professional service, \$400, thereupon received in evidence and marked Plaintiff's Exhibit No. 1.

(Statement of St. Vincent's Hospital, dated 10/16/46, in amount \$518, account Mrs. Albert Teutschman, thereupon received in evidence and marked Plaintiff's Exhibit No. 2.

(Group of ambulance bills thereupon received in evidence and marked Plaintiff's Exhibit No. 3.

(Statement of Memorial Hospital, Redding, California, in amount \$58, thereupon received in evidence and marked Plaintiff's Exhibit No. 4.

(Statement of Abbey Rents, wheelchair, in amount \$5.50, thereupon received in evidence and marked Plaintiff's Exhibit No. 5.) [25]

Mr. Ryan: You may cross-examine.

(Testimony of Maggie Mae Teutschman.)

Cross-Examination

By Mr. Strayer:

Q. How long ago was it you originally hurt your right leg?

A. It has been about sixteen years ago.

Q. That was when a vacuum cleaner fell against it? A. Yes.

Q. Were you working at that time?

A. Yes, I was.

Mr. Ryan: If the Court please, Dr. Thatcher is here and, if there is no objection, we would like to put him on at this time.

Mr. Strayer: Certainly.

(Witness temporarily excused.)

DR. H. THATCHER

was thereupon produced as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Dr. Thatcher, you are a licensed physician and surgeon in the State of Oregon, are you not?

A. Yes.

Mr. Strayer: We will admit the doctor's qualifications.

Q. (By Mr. Ryan): Are you acquainted with Mrs. Teutschman, the plaintiff here? A. Yes.

(Testimony of Dr. H. Thatcher.)

Q. Will you give a record of your acquaintance-ship with her case?

A. This lady came in to St. Vincent's Hospital, in January some time for treatment for a fall. She had a fracture of the right femur at the junction of the upper and middle thirds. She came in to St. Vincent's as a staff case. I mean by that that she was attended by the resident, the surgical resident, and at that time the surgical resident was Dr. Henderson. He took care of this case but it was supervised by Dr. Pasquesi and myself. Dr. Pasquesi was working for me at that time.

The Court: Did you do the surgery?

A. No, sir, I didn't.

Q. Were you present when it was done? [27]

A. I can't say that I was.

Q. Was your assistant present? A. Yes.

Q. Did he do it?

A. Well, yes, he supervised it.

Q. How do you spell his name?

A. P-a-s-q-u-e-s-i. After the fragments, the upper and lower fragments, were lined up, gotten into as straight a line as we could get them, and there was enough callus formed so that the withdrawal of the pin did not make the fragments slip, she was put into a spica cast.

Q. (By Mr. Ryan): Did she receive treatment from you personally after that?

A. I saw Mrs. Teutschman when I took her cast off and reviewed her X-ray pictures and took her cast off and I believe after that she came to my office as my patient.

(Testimony of Dr. H. Thatcher.)

Q. Was there any complaint made by Mrs. Teutschman other than the injury to her leg?

A. Yes, she complained of pain in her neck; complained of pains in her neck at the right side which she said affected the control and movement of the head, and said that these pains were worse at night. She had not complained of those in the hospital because I looked over the record——

The Court: She just said she had pain in her back when she talked to you, or do you have any recollection of that? [28]

A. No, sir. Yes—Well, she had not complained of it. She complained of those things after she came to my office. X-ray pictures were taken of her cervical vertebrae and her back, lumbar vertebrae, and at that time there was no bony abnormality seen in these X-ray pictures.

Q. (By Mr. Ryan): Were any X-rays taken of her foot? A. I don't recall it.

The Court: He said the pictures of her back and her neck showed no bony abnormality.

Mr. Ryan: I wondered about the foot.

The Court: You think maybe there is a picture there?

Mr. Ryan: Yes. He said he did not recall whether he had one taken or not.

The Court: Ask her.

The Plaintiff: No, I don't think he took one of the foot. He never X-rayed the foot.

(Testimony of Dr. H. Thatcher.)

The Court: Suppose you look over your notes. There is no hurry about it. Look over your notes and see if there is any record about her foot, either before or after the hospital treatments.

A. No, I haven't any record of her complaint about her foot.

The Plaintiff. I know one time when I was down to the office I told him about it and I said that bone was broken, with the pain I was suffering, and you said it was.

A. I do not recollect it at all. [29]

The Plaintiff: Yes.

Q. (By Mr. Ryan): Was there any evidence of osteomyelitis?

A. I would have to look this over. The record shows that there was some osteomyelitis, some previous injury to the hip, which she reported as a previous injury.

The Court: Mr. Strayer, does the defendant contend that there is a relation between this osteomyelitis and the fracture of the leg?

Mr. Strayer: I think only in the sense, your Honor, that it would have weakened the bone so it would have made it more easily broken.

The Court: I don't see what difference that would make.

Mr. Strayer: It does not, except as bearing on the manner in which the accident happened.

The Court: Do you expect to have medical testimony?

Mr. Strayer: No, your Honor.

(Testimony of Dr. H. Thatcher.)

The Court: Just take your time, Doctor. You will be the only man in the case, the only medical man in the case. We cannot expect you to remember all these things.

A. This is not the way we take care of private cases, as a rule, and it makes it a little difficult to remember. These staff cases are taken care of by the staff and they are only overseen by them.

I do not see any evidence of any osteomyelitis in this picture, these pictures here. [30]

The Court: Her testimony is that, while she was employed doing janitor work in an office building some years ago, she was struck in the groin with a vacuum sweeper, according to her deposition which I read last night, and she said that never healed up altogether. Did that Redding doctor speak of osteomyelitis?

Mr. Strayer: Yes, in the Redding doctor's deposition, he testified there were two draining fistulas in the upper femur.

The Court: Where?

Mr. Strayer: The upper third of the right femur.

The Court: That is in his deposition which you expect to put in evidence?

Mr. Strayer: Yes.

The Plaintiff That is way up here. My break is way down here, below the knee.

A. I do not see any evidence in these pictures. These are not very complete pictures. There must have been other pictures. There must have been other pictures taken.

(Testimony of Dr. H. Thatcher.)

Q. (By Mr. Ryan): If this condition did exist in the upper part of the leg, or hip, would that have a tendency to affect a fracture in the place where Mrs. Teutschman received it?

A. If there was osteomyelitis of the femur at some portion of the femur, you would expect a fracture would occur at the site of the osteomyelitis. There is no fracture, as I recall it, at the site of the osteomyelitis. It does not weaken the rest of the bone. It does not weaken the lower end of the bone.

The Court: Here is what the Redding doctor testified to in his deposition when it was taken down there. I see the point now.

“Q. Can you state what the X-rays did show?

“A. Showed a spiral fracture of the right femur, also an osteomyelitis of the left femur with extra bony decalcification and decomposition.

“Q. Did you discuss the osteomyelitis with the patient, Mrs. Teutschman, concerning the history of it? A. Yes.

“Q. Did she give you any statement as to that condition?

“A. I don't recall very clearly but she had been treated for it before, she told me, but I don't recall where she had been treated.

(Testimony of Dr. H. Thatcher.)

“Q. Was there any evidence of the osteomyelitic condition on the surface of the body?

“A. Yes, there were two draining fistulas, one near the fold of the buttocks and one on the anterior surface, as I recall it.”

Mr. Strayer: I think he used the word “left” femur in error.

The Court: That is all we know about osteomyelitis. [32] Go ahead with your examination.

Q. (By Mr. Ryan): What do you think will be the result of this leg condition? Will it be stationary or will it get better as times goes on?

A. I don't know the range of motion of her knee joint. Usually the range of motion increases. As a rule, these cases get better as time goes on, in most fractures, because when we encase them in a cast there is a certain amount of limitation in the joint. This usually clears up and takes a long time to do it.

The Court: She says she was in a body cast for—how long?

Mr. Ryan: Two months.

A. That is right.

The Court: She says she was in the hospital for—how long?

Mr. Ryan: She was in the hospital, I believe, eight weeks.

A. That is right.

The Court: Then she was at home, under the care of a nurse, for, how long?

Mr. Ryan: Two months.

(Testimony of Dr. H. Thatcher.)

The Court: Yes. She says she has not been able—she is not able to put on her stockings or underclothes or take them off by herself, and that is, how long ago?

Mr. Ryan: She has not been able to do that right up to now.

The Court: When was the injury?

Mr. Ryan: The injury was the 9th of January, 1946.

The Court: That is what I want to know, Doctor. That [33] is going on two years now.

A. It should be stationary by this time.

Q. (By Mr. Ryan): It should be stationary by this time? A. Yes.

The Court: She was in a wheelchair for a while, too.

Q. (By Mr. Ryan): This condition of the neck, would it necessarily show upon X-rays if a person received a blow or jar on the neck that resulted in headaches and pain on motion of the neck? Would it necessarily show up in X-rays?

A. Yes, it would, if it lasted that long. It would have to. It is not possible to have a muscle injury of the neck and have symptoms continue this length of time.

Q. Would the same thing be true of the back?

A. To a less degree. Your back has to carry more weight than your neck does. Your neck only carries the weight of your head, while your back carries the weight of your trunk, and, as a rule, back pains are slower in getting well but, if there

(Testimony of Dr. H. Thatcher.)

is no bony abnormality in the back, then I would say eventually, with supportive treatment, I mean with a corset, and lack of strenuous activity, the back should absolutely get well, if there is no bony abnormality, but the muscle injuries do not last that length of time, as a rule.

Mr. Ryan: That is all. [34]

Cross-Examination

By Mr. Strayer:

Q. I am not sure I understand what a surgical resident is.

A. Well, hospitals—May I just divert? Hospitals are coming under the control of the American College of Surgeons. To do that, they have to have certain equipment. The interns have to go through teaching—they must be taught by the doctors who are the heads of the different staffs. I happened to be the head of the orthopedic staff at that time. In the same way, Dr. Joyce was the head of the surgical staff, and so on. These interns must have a certain amount of instruction, supervised instruction, to come under the American College of Surgeons specifications, to have “A” class.

So, when these cases come in, they either come in to a certain doctor or they come in as, we call them, staff cases; that is, they are attended by the resident; that is, the boy that has spent his internship and then takes an extra year in a certain branch of work, and this boy took an extra year

(Testimony of Dr. H. Thatcher.)

in surgery so, because this was admitted as a staff case, he went along and was supervised on everything that was done. We usually assist those young men and in that way make it a teaching staff rather than our doing it.

Q. That would indicate she came there, not as your patient but the patient of any particular doctor who came——

A. Well, she came as a staff case, because Dr. Henderson had [35] charge and was the staff doctor at that time.

Q. When you first had contact with the case, were you consulted about anything other than the injury to her leg? A. No, not at first.

Q. Can you recall when you were first consulted with regard to anything else?

A. Well, I don't recall whether—I was over Dr. Henderson when he put this pin in, but I don't recall if I passed judgment on whether or not the cast should come off and whether or not the leg was solid enough to take the cast off at the time.

Q. When did she first make a complaint about pain in her neck and back?

A. I don't recall, but it was in my office.

Q. That would have been at least two months?

A. She may have made those to Dr. Pasquesi but not to me.

Q. It was some months after you first saw her in the hospital? A. Yes.

Q. When she made those complaints, did you take other X-rays?

(Testimony of Dr. H. Thatcher.)

A. Took X-rays of her back and X-rays of her neck, which included the lower part of the skull and the cervical vertebrae.

Q. How long ago were those X-rays taken?

A. I don't recall.

Q. And you were unable to find anything to disclose the source of these pains in the neck and back?

A. That is right. [36]

Q. There is some talk about a broken bone in the foot. As I understand you, if I understand you correctly, you have no recollection of a complaint being made about the foot?

A. That is right.

Q. You would normally have had an X-ray taken if there were a complaint about pain or injury to the foot?

A. That is right.

Q. Did Mrs. Teutschman give you any history of how she received the injury?

A. No, I didn't get any history.

Q. You have no information then as to the manner in which she broke her leg?

A. No, none at all.

Q. Do you recall anything at all in regard to evidence of osteomyelitis of her leg?

A. No, I don't recall it. I vaguely remember something was said of a prior fracture, evidence of a subtrochanteric fracture on one side, a previous injury, but if a person had osteomyelitis or a draining sinus, then a window or hole would have to be cut out of her body cast in order to treat those

(Testimony of Dr. H. Thatcher.)

draining wounds, and I believe that was not done.

Q. The logical assumption, then, would be that if there had been a draining fistula there, it had dried up by that time? A. Yes.

Q. What is osteomyelitis, Doctor? [37]

A. Osteomyelitis is an infection of the bone itself. It usually affects the entire bone.

Q. In what way does it affect the bone? Does the bone decay?

A. The bone decays. In osteomyelitis there is a decaying process of the bone. It is affected by various types of bacteria. While it decays, it builds up—we call the decayed portion the sequestrum. While a portion of the bone is dying, due to the effect of this bacterial action, it also grows—while the decaying process is going on, a growing process is going on, a bone called the involucrum, so it is possible for a bone to be almost entirely replaced by the so-called involucrum, or new growth of bone which goes on at the same time as the sloughing of the bone itself.

Q. Does that cause the patient any pain?

A. In acute osteomyelitis, it causes very severe pain but in chronic osteomyelitis, as a rule, pain is not present. The worst feature about chronic osteomyelitis is that continual drainage. The bone will drain and drain and drain. Then, suddenly it will get rid of small spicules of dead bone and the sinus or the opening will close up and then in a few years this all starts over again, irrespective of accident or anything else.

(Testimony of Dr. H. Thatcher.)

Q. Mrs. Teutschman testified about this accident about twelve years before, I think it was; she had this draining place on her leg during all these years, and until she went down to [38] Los Angeles in the fall of 1945, and she said then she had approximately 140 injections of penicillin down there, which caused these sores to dry up. Would that be consistent with the presence and treatment of osteomyelitis?

A. Acute osteomyelitis is a very terrible thing and occurs largely in younger people. It is combatted beautifully with the use of penicillin. We have stopped many cases of acute osteomyelitis by the use of injections of penicillin.

However, when osteomyelitis becomes chronic, it is absolutely like pouring penicillin in the river. It has no effect on it. It is considered by eminent physicians and surgeons and orthopedists that it has no effect on chronic osteomyelitis at all.

Q. Would that history I have just related to you indicate the presence of chronic osteomyelitis?

A. Well, you mean from giving penicillin?

Q. No, I mean the fact that following this injury she had these draining sores on her hip for a period of twelve years?

A. I don't know. I would just have to guess.

Q. It could have been something else?

A. Oh, yes.

Q. Have you ever examined her for the purpose of determining whether she had chronic osteomyelitis? A. No.

(Testimony of Dr. H. Thatcher.)

Q. It is possible and consistent with the examination that you [39] have made that she has been suffering from osteomyelitis?

A. Well, yes, I imagine she could have.

Q. Before this last accident, Mrs. Teutschman walked with somewhat of a limp and, I believe she testified in her deposition, one leg was slightly shorter than the other. Would that condition result from osteomyelitis over a long period of time?

A. Yes, because it will affect the growth centers of bone, causing shortening.

Q. Doctor, Mrs. Teutschman has testified also that she has great difficulty in dressing in the morning, putting on her shoes and stockings; she states that she even has to have help in doing all that.

From your examination of her, have you found anything to explain that difficulty which she has?

A. No, sir.

Q. Have you found any evidence of any limitation of motion of the knee?

A. I don't recall that. As I said before, I don't remember her limitations of motion in her foot or knee—knee or hip.

Q. Had she complained to you of having that difficulty?

A. Well, I don't recall. She may have and I don't recall it.

Q. How often have you seen her since she was a patient in the hospital?

A. I wouldn't be able to say. I would say probably once a month or maybe sometimes oftener. [40]

(Testimony of Dr. H. Thatcher.)

Q. That has been at your office?

A. At my office or at the hospital on Tuesday mornings when we changed casts.

Mr. Strayer: I think that is all.

Redirect Examination

By Mr. Ryan:

Q. You say osteomyelitis affects the whole bone?

A. I say it may affect the whole bone.

Q. Would that condition be apparent from an examination of these X-rays, if it existed at the place of fracture? There is no evidence of that, is there, Doctor?

A. No, I see no evidence.

Mr. Ryan: That is all.

Recross-Examination

By Mr. Strayer:

Q. I think the doctor in Redding testified that the point of the osteomyelitis was above the fracture. When he was asked by Mr. Pelay whether they were adjacent or co-adjacent with the fracture, he said they were not co-adjacent: they were adjacent in the sense they were quite near together. Does that have any effect on your opinion?

A. No, not in the slightest. I understand from these pictures—nowhere near that fracture; not within six inches or seven inches, so I wouldn't say osteomyelitis has not affected that femur, in these picture, and I wouldn't say it had anything [41] to do with the fracture, as far as anything I can see.

Mr. Strayer: That is all.

(Witness excused.)

MAGGIE MAY TEUTSCHMAN

the plaintiff herein, having been previously duly sworn, resumed the stand and was examined and testified as follows:

Cross-Examination
(Continued)

By Mr. Strayer:

Q. Mrs. Teutschman, going back to the time when you first received this injury, you were treated by a doctor here in Portland, weren't you?

A. Yes.

Q. Dr. Harroun——

The Court: Which injury?

Mr. Strayer: I mean the first injury she received about twelve years ago.

A. Sixteen years ago. I had that injury at the building.

Q. (By Mr. Strayer): When did these sores on your hip develop?

A. Well, it was about six months after the vacuum cleaner handle hit me. There was a knot come and Dr. Harroun lanced it. Then he called it a sub-flesh abscess. He still says today that is what it is. [42]

Q. One of these, or two of them? A. One.

Q. Just one? A. Just one of them.

Q. That is all you ever had, just the one?

A. Yes.

Q. Did that drain rather continuously?

A. Well, yes. Dr. Harroun told me, he said they have them and you can have it a lifetime.

(Testimony of Maggie Mae Teutschman.)

Q. That is what he told you when he was treating you for it? A. Yes.

Q. When did he stop treating you?

A. Oh, I haven't seen Dr. Harroun for fourteen or fifteen years, I don't think.

Q. At that time did you walk with a limp?

A. Very little; kind of favored that—

Q. But before you had that injury, did you walk with a limp? A. Oh. no.

Q. I think you said in your deposition, when your deposition was taken, that one leg was shorter than the other?

A. Well, it could have been, but it did not make me limp enough to hardly notice it. I could walk— If I would think about what I was doing, I would walk just the same as I ever did. You can get in the habit of limping along.

Q. After that first injury, sixteen years ago, was that getting [43] a little worse? A. No.

Q. Seemed to be about the same?

A. Yes; my leg was just as strong as it was before it was hurt. I could work and do the same as I ever did. I worked in the building four years after that. I never did quit working with it.

Q. Then, after you quit working in the building, you continued working in your apartment house, you and your husband?

A. No, he didn't help me. I run the apartment house by myself. I did all the work of laundering for the apartment house and took in washing and ironing besides. I used to do extra work.

(Testimony of Maggie Mae Teutschman.)

Q. Then, when you went down to California, your sister and her husband wanted you to come down and stay with them for a while?

A. Yes. I went down to visit them.

Q. Did you have any intention of taking treatments when you went down there?

A. No, I didn't.

Q. How did it happen you took these penicillin treatments?

A. My sister was treating with a doctor down there. She had heard so much about penicillin shots for things like that; she had heard rumors about treatments with penicillin and they had such wonderful success; she talked me into trying it anyway, which I did.

Q. As you remember, you had 140 injections of penicillin? [44] A. Yes.

Q. That must have been over a period of several months?

A. Yes, it was. I was taking three a day for five days and then resting two days and then take five days more at three a day.

Q. Had you just completed those shots when you started back to Portland?

A. Well, it had been about two weeks or more since I had taken any.

Q. I think your testimony in your deposition was that this running sore was dried up by the time you started back? A. It seemed dried up.

(Testimony of Maggie Mae Teutschman.)

Q. When you went down to California, this abscess was still running?

A. Yes, just a little, just one place.

Q. Is it still dried up?

A. It is not now, since I got hurt.

Q. It has been running ever since you got hurt?

A. Yes.

Q. Have you taken any treatments for that condition? A. No, I have not.

Q. Did they put any applications on when you were in the hospital?

A. No, they couldn't. I had to hang up there, lay flat on my back, and couldn't move for six weeks, and they couldn't [45] do a thing, as long as I had it hanging up there in traction, but I complained all the time to the doctor that was taking care of me, Dr. Henderson, about my neck and back and foot. He said, "There isn't anything we can do until we get your leg out of the way."

Q. When you were in this cast, did they make any opening in the cast in order that they could take care of this abscess?

A. No. Dr. Thatcher just said that. No, there was no chance there; there was nothing.

Q. No way of taking care of it? A. No.

Q. Did it just drain down inside that cast?

A. It didn't drain very much, just a small amount that it would drain but not enough so that they had to make a hole.

Q. After the cast was taken off, did they treat the abscess? A. No, he has not.

(Testimony of Maggie Mae Teutschman.)

Q. Has he done anything? A. No.

Q. Have you had it examined by a doctor?

A. No.

Q. Going back to Los Angeles, now, as I understand, you went to the downtown ticket office to buy your ticket home? A. Yes.

Q. That was the ticket office of the Southern Pacific Company? A. Yes. [46]

Q. You said you asked for a lower berth?

A. Yes, I did.

Q. Assuming you had received a lower berth, you never even looked at your ticket?

A. No, I didn't.

Q. So, you didn't know what you actually received? A. No.

Q. Do you know how much you paid for it?

A. I couldn't say just what I paid; couldn't say just what it cost me.

Q. You rode a day coach from Los Angeles up to Martinez? A. Yes, I was on a day coach.

Q. So, you did not have a Pullman ticket all the way through, apparently?

A. I don't know what she sold me. I know I had a ticket all the way to Portland and I had an upper berth, or lower berth, supposed to be.

Q. You had two separate pieces of paper, didn't you? One was your railroad ticket; the other was your berth ticket?

A. No, I never had but one ticket.

Q. You had only one piece of paper?

A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. But you did ride the day coach up as far as Martinez? A. Yes.

Q. Were there any Pullman cars on that train?

A. Couldn't say.

Q. Who was the Pullman man you say you talked to on that train?

A. I don't know who he was.

Q. How do you know he was a Pullman man?

A. I know they are in white; they are dressed in white.

Q. If there was no sleeper car on that train, there wouldn't have been any Pullman man on there? A. I don't know what he was.

Q. Was he a colored man? A. What?

Q. Was he a colored man?

A. No, I don't think he——

Q. Was he a white man? A. Yes.

Q. Dressed in white?

A. I don't remember just about that. I really don't, but I know he was supposed to go on that train out to the end of the line and come back with it.

Q. I suppose somebody told you you were to get off at Martinez and change trains?

A. The conductor told us that when he came through taking the tickets, as I remember.

Q. The conductor of the day coach?

A. Yes.

Q. He is the one who told you to change trains at Martinez? [48]

(Testimony of Maggie Mae Teutschman.)

A. Yes, I think he was. I don't just remember. I know I was supposed to get off there and change cars, but I didn't know why.

Q. You got off and waited in the station for about an hour and a half or two hours for the next train?
A. Yes.

Q. You had been told to change trains there and you had been told what train to take?
A. No.

Q. How did it happen you went out to get on this particular train?

A. Well, we all stood there and waited and watched the time until the train came and, when the train came, everybody that got off the same train where I was all went out to get on that train. One man that was on that train, he carried my bag for me out to the train, and we all went on the same train.

Q. Did he get on the same car when you did?

A. Yes.

Q. Sure of that?

A. Yes, he got on the front end. I couldn't get on the front end. He got on there. I couldn't get on the front end because I had a berth ticket and I had to go back to the back of the train to get on.

Q. He did not get on the same car you did?

A. No, he got on at the front end. I got on at the back end. [49]

Q. You carried your baggage or bag to the back end?
A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. What did your baggage consist of?

A. A shopping bag full of slippers and things and my violin.

Q. Did you have a violin? A. Yes.

Q. In a violin case? A. Yes.

Q. Weren't you using that violin case as a suitcase?

A. No. I had nothing in it but my violin.

Q. You got down, then, to the end of the train where this Pullman car was. Was there a conductor out on the ground by the door? A. Yes.

Q. And a porter also?

A. The porter, he stood up on the steps.

Q. Did you show your ticket to the conductor?

A. I couldn't say if I did or not.

Q. You said he didn't seem to want to let you on the train?

A. No, it didn't seem he was going to let me on at first.

Q. What did he do?

A. He just said, "Well, you ain't going to get on here" or something like that to me. He wasn't going to, at first, let me on.

Q. Is that what he said? [50]

A. Yes. Then I said, "Well, I have a ticket. How does it come I don't get on." and then he said to the porter, "Take her on, then."

Q. All this conversation was without you even showing your ticket?

A. I wouldn't say that I didn't show him my ticket. I don't remember whether I showed him the ticket or not.

(Testimony of Maggie Mae Teutschman.)

Q. Don't you recall him telling you that was the wrong train? A. No, he didn't.

Q. That this ticket was for the next train?

A. He didn't.

Q. Don't you recall complaining to him about having to walk back to the station again?

A. No, I don't recall complaining to him about walking back to the station.

Q. You got on this car, then? A. Yes.

Q. The porter started to make up this upper berth 14? A. Number 14, yes.

Q. Were all the berths in the car made up except that one?

A. I don't remember any other berth, only that one. They all had curtains on there, but this is the only one——

Q. They were all made up excepting Upper 14?

A. They was all hid. I don't know whether they was made up or not. [51]

Q. All hidden with curtains? A. Yes.

Q. There were no curtains on Upper 14 at all?

A. No, not that I saw.

Q. Were there or were there not, Mrs. Teutschman?

A. If there was, I didn't see any. I didn't see no curtains.

Q. Could they have been there without your seeing them, do you think?

A. I don't know whether they could or not. It could have been such a thing, but if there was, must have been pulled clear back, because there was nothing in front of my berth.

(Testimony of Maggie Mae Teutschman.)

Q. Did you look for curtains?

A. No, I didn't.

Q. You did not? Weren't you interested in having curtains on that berth?

A. I don't know how they was supposed to be. I never was in one of these places before. I noticed the rest of them had curtains. I wondered, how does that come I don't have any curtains on my berth, but I didn't see no curtains.

Q. The porter helped you inside the berth, Upper 14? A. Yes.

Q. And you lay down and went to sleep with your clothes on? A. Yes.

Q. You did not ask the porter for any curtain?

A. No, I didn't, didn't do anything. [52]

Q. Did it occur to you to ask the porter where your curtains were?

A. He just put me up in the berth and then just went.

Q. It did not occur to you to ask for curtains?

A. I didn't have no chance to ask him for no curtains. He just put me up in the berth and disappeared. I never seen him any more.

Q. Did it occur to you to look at the ends of the berth to see if there were curtains there which you could pull back?

A. No, never thought about that.

Q. You never thought about that either?

A. No.

Q. You lay down and went to sleep?

A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. In an hour or two hours, something like that, you waked up, as I understand it? A. Yes.

Q. And you rang this bell? A. Yes.

Q. Did the porter—you say the porter came to your berth? A. Yes, he did.

Q. What did you say to the porter when he came there?

A. I asked him if I could have a drink.

Q. What did he do?

A. He didn't do anything. He just went and got it. [53]

Q. Turned around and went and got the water and brought it back to the berth? A. Yes.

Q. Did you say anything about the curtains at that time?

A. No, I didn't. He just handed me the cup of water up and went. I didn't speak to him and he didn't speak to me.

Q. You spoke to him to ask him for the water?

A. Yes, I might when he handed the drink.

Q. That is when he came back? A. Yes.

Q. Was this a colored man, this porter?

A. Yes.

Q. You are quite sure it was he who brought you the drink of water? A. It was a colored man.

Q. It was not the conductor? A. No.

Q. You remember quite clearly ringing for him and having him come and asking him for a drink of water? A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. When your deposition was taken, didn't you testify you rang the bell and the porter came and he brought you the drink of water and you never said anything to him and he didn't say anything to you? A. That is right. [54]

Q. You rang the bell, the porter came and you asked him for a cup of water. Then, you say he went and got it and brought it back to you?

A. Yes.

Q. When your deposition was taken, is it not true that you testified that you rang the bell and the porter came and—the porter came to your berth with a cup of water? Reading from page 44 of your deposition, I will ask you if this was not your testimony:

“A. * * * I know when I woke up I wanted a drink of water, and I discovered this bell on the wall and I rang the bell and the porter came in and gave me a drink.

“Q. And who was it, the porter or the conductor? A. The porter.

“Q. A colored man?

“A. Yes, a colored man.

“Q. With a white coat?

“A. Yes, with a white coat.

“Q. What did you say to him?

“A. Nothing.

(Testimony of Maggie Mae Teutschman.)

“Q. How did he know you wanted a drink?

“A. I rung the bell and when I rung the bell he come and fetched me a drink of water.

“Q. He came and brought you a drink of water? [55]

“A. In a paper cup.

“Q. You didn’t have to ask for the water?

“A. No, I didn’t have to ask for the water. All I did was ring the bell.”

Do you remember testifying that way in your deposition?

A. I might have, but I rung the bell and he came. I asked him if I could have a drink and he went and got a drink of water and came back and handed it to me.

Q. It was your testimony on your deposition that he came and brought the water without you asking for it, wasn’t it?

A. I could have been a little confused and nervous.

Q. Now, you have got a clear recollection of asking him to bring you a drink of water?

A. Yes, because he come after I rang the bell. I asked him if I could have a drink.

Q. Didn’t you take any medicine with it?

A. I did not.

(Testimony of Maggie Mae Teutschman.)

Q. You had some medicine with you?

A. I had some pills that belonged to my sister. That same doctor was treating my sister and she says that he gave her some pills for her headache and used them when she would travel on a long journey, sometimes, for a headache. She put some of them in a bottle and wanted me to take them. I told her I did not want them; I would not take any sleeping pills. She stuck them in my coat pocket and she said, "You take them along, if you get [56] a headache or anything." They didn't belong to me. They belonged to her.

Q. What were they, capsules?

A. I never looked at them.

Q. You saw them?

A. No, I never paid any attention. I saw them in the hospital when they talked to my sister.

Q. You saw that they were capsules?

A. Yes.

Q. Yellow capsules?

A. I didn't pay any attention.

Q. Don't you recall they were yellow?

A. No, I don't know a thing about that.

Q. Did your sister tell you what they were?

A. No, she didn't know herself.

Q. You carried that bottle in your pocket?

A. Never had it out of my pocket from the time she put it in there until after I was in the hospital. My neck hurt me so bad, and when the nurse came I told the nurse "There is some pills in my pocket in a bottle that my sister put in there. Get them and hand them to me."

(Testimony of Maggie Mae Teutschman.)

Mr. Ryan: I am going to enter an objection about—to any question about pills. I don't see where they have anything to do with the case. I think that is irrelevant to the issues.

The Court: Go ahead, Mr. Strayer. [57]

Q. (By Mr. Strayer): You say you told the nurse that these pills were in your pocket?

A. Yes, I told her, "There are some pills in my pocket that my sister put in there, in case I get a headache," and she went and got them out of my pocket.

Q. What did she do with them?

A. I don't know. She kept them and when my sister came I told her, "Those pills you took out of my pocket belongs to my sister. You should give them back to her," and she gave them back to her.

Q. You never had the bottle open so that you might see?

A. I don't remember.

Q. Didn't open it at all?

A. I didn't. I had no headaches.

Q. Didn't take any pills out of it?

A. I had no reason for taking any.

Q. When you rang for the porter to bring you a glass of water, you didn't tell him you wanted to take some medicine?

A. Didn't what?

Q. Did you take any medicine before you got injured?

A. Never took any; never took any from the time I left Los Angeles until I went to the hospital. I felt wonderful.

(Testimony of Maggie Mae Teutschman.)

Q. You were not in any pain?

A. No. My sister fixed up my lunch for two days. I ate it all one time and besides I went in the diner and had a cup of [58] coffee.

Q. Were you waiting in the railroad station with any people? A. I was.

Q. Did you take any medicine while you were there? A. I did not.

Q. You say after the porter brought you the glass of water you went back to sleep again?

A. Yes.

Q. And some time during the night you started raising up, you say?

A. Yes, I woke up and just started to raise—didn't get my head off the pillow and the next thing I knew I was right out there on the floor.

Q. Were you lying on your back at the time?

A. Yes.

Q. Did you start to turn over?

A. I just started to raise my head up and, as near as I remember, I just went right on out.

Q. Did you go out feet first?

A. I don't know whether I did or not.

Q. You were awake, weren't you?

A. I was just halfway awake; just woke up out of a sleep; I just went to raise my head and I just went on out and hit the floor.

Q. Went on out? [59]

A. Just went right onto the floor.

(Testimony of Maggie Mae Teutschman.)

Q. You don't know whether you went feet first or head first?

A. Suppose I must have went sideways, the way I was laying.

Q. What part of your body hit the floor?

A. I don't know.

Q. You have no idea?

A. I have no idea how I hit the floor.

Q. Were you awake as you were falling?

A. Yes, but, at the same time, not too awake. I realized when I hit the floor; made kind of a funny, crumpling noise when I hit the floor.

Q. Did you grab hold of anything as you fell?

A. No, just went right out and hit the floor.

Q. Dr. McVicker testified in his deposition that you told him you grabbed the rail as you fell. Do you recall that?

A. Didn't tell him anything of the kind because I didn't grab no rail at all.

Q. That is not true, then?

A. No, it is not true.

Q. Were you facing the berth as you went out, as you fell, or did you have your back to the berth?

A. I couldn't hear what you said.

Q. As you fell out of the berth, were you facing the berth or did you have your back to it?

A. I was laying flat on my back. Like this was the berth [60] (illustrating), my head was here; I was laying flat on my back on the berth. I woke up, just went to raise my head and went on out. The next thing I knew I hit the floor.

(Testimony of Maggie Mae Teutschman.)

Q. What position on the floor?

A. I was on my back.

Q. Did you have any pain? A. Not then.

Q. When did you first have pain?

A. When I was in the hospital, when they went to take the X-ray pictures.

Q. You had no pain before that?

A. Oh, I was——

Q. Were you conscious when you hit the floor?

A. I don't know if I was conscious or if it knocked me out. After I hit the floor, I couldn't remember because—one thing I do remember is that I was trying to raise my shoulders up and the conductor come and he had a flashlight in his hand and he looked over there and saw me and he said, "Did you fall out of bed?" I said, "Yes, I fell out of bed," and he come over and started raising me up by the shoulders. Just about that time the porter come and the two of them were trying to lift me up and I passed out; never knew when they lifted me up.

Q. You remembered nothing further until you were taken to the hospital?

A. No, I didn't remember any more until they had taken me off [61] the train. I just was barely to enough to realize they was handling me around.

Q. Weren't you advised by your doctor the draining fistula you had on your leg was osteomyelitis? A. No, he called it a flesh abscess.

Q. That is what Dr. Harroun called it?

A. Yes.

(Testimony of Maggie Mae Teutschman.)

Q. The next doctor you had in Los Angeles, didn't he call it osteomyelitis?

A. He said it could have been, yes, a case of osteomyelitis.

Q. Have you had other doctors tell you that?

A. No.

Q. The first doctor you had at Redding was Dr. McVicker. He was the Southern Pacific doctor.

A. I couldn't tell you. I don't know who I had or what he was.

Q. You did have Dr. McVicker for awhile?

A. I don't know his name.

Q. The Southern Pacific doctor?

A. That is what they told me.

Q. You discharged him from the case and hired an osteopath? A. I didn't discharge him.

Q. You hired an osteopath, did you not?

A. No, I didn't.

Q. You didn't? [62] A. No.

Q. Did you hire a doctor at all? A. No.

Q. Who was the doctor you paid the \$10 to?

A. He was the doctor that put my leg in a splint and fixed it so I could travel with it from there to here.

Q. That was not the Southern Pacific doctor?

A. No.

Q. Where did he come from?

A. I don't know. He was a doctor that was in Redding. The hospital called him.

Q. Did he say anything about the sore on your leg? A. No.

Mr. Strayer: I think that is all.

(Testimony of Maggie Mae Teutschman.)

Redirect Examination

By Mr. Ryan:

Q. Mr. Strayer asked you if you quit your job at the Porter Building about four years before your first injury? A. Four years after.

Mr. Strayer: Four years before the second, I meant to say.

Mr. Ryan: That is all.

Mr. Strayer: I might have one or two more questions.

The Court: It is practically 12. Let us finish with her now. [63]

Mr. Strayer: I want to look at a sealed exhibit.

Recross-Examination

By Mr. Strayer:

Q. Mrs. Teutschman, I hand you Pre-Trial Exhibit No. 10. Is that your signature at the bottom?

A. Yes, it is.

Q. On the second page, is this also your signature? A. Yes.

Q. And on the third page, likewise, is that your signature? A. Yes.

Q. Do you recall when that statement was signed? A. No.

Q. You do recall signing it, however?

A. I don't recall signing anything, no.

Q. This is dated January 10, 1946. Do you recall talking with Mr. Zeller about your accident?

A. That is right.

(Testimony of Maggie Mae Teutschman.)

Q. I presume in Redding?

A. No; I never talked to anybody in Redding about my accident.

Mr. Strayer: I offer the statement in evidence, your Honor.

Mr. Ryan: No objection.

The Court: Admitted.

(Document consisting of three pages entitled "Statement Relating to Accident" and signed "Mae Teutschman," was thereupon received in [64] evidence and marked Defendant's Exhibit No. 10.)

Mr. Strayer: I would like to read this statement to you. It may recall to your mind some things you have forgotten.

"I was 61 years of age October 16, 1945." Is that the correct date of your birth?

A. Yes.

Q. "I went to Los Angeles September 23, 1945, and since that time have been visiting my sister, Violet Groestein at 705 West Sixth Street, Los Angeles. I left Los Angeles at 8 a.m. January 9, 1946, on Train No. 51, my ticket number being 659 and calling for window seat No. 11, Car 66. I held Pullman space from Martinez to Portland, and occupied Upper 14 in Tourist Car K.G. I retired about 10:30 p.m. and lay facing the fall. I went to turn over during the night and in doing so fell over the edge of the berth to the floor, injuring my right knee."

A. I never went to turn over.

(Testimony of Maggie Mae Teutschman.)

Q. That is incorrect, then?

A. It sure is.

Q. "There was no sudden jerk, lurch or movement of the train which caused me to fall from the berth."

Is that correct? Was there any jerking movement of the train?

A. I couldn't say whether there was or not.

Q. "There was nothing unusual about the movement of the train which in any way contributed to my injury. The sole cause of my injury was the fact there was nothing at the edge of the berth to prevent me from falling out." Is that correct?

A. I didn't understand.

Q. "The sole cause of my injury was the fact there was nothing at the edge of the berth to prevent me from falling out."

A. There was nothing there, no.

Q. "I am quite certain I landed on my feet when I struck the floor and then fell backwards to the floor." How about that? A. No.

Q. You don't think you fell on your feet?

A. I didn't.

Q. What part of your body do you think struck the floor first?

A. I don't know a thing about it.

Q. You just don't know?

A. I just don't know.

Q. "My only injury seems to be to my right knee, and I have previously suffered from bone infection in this leg." Do you remember saying that?

(Testimony of Maggie Mae Teutschman.)

A. That is all talk.

Q. It is not true you had a bone infection in your right leg?

A. He never asked me such a question.

Q. "In fact, that is one of the reasons I went to Los Angeles. While there, I took 120 penicillin treatments from Dr. Harger [66] on 2nd and Figueroa Street, Los Angeles, for this bone infection in my right leg."

Did you tell Mr. Zeller that? A. I didn't.

Q. "I am going to continue these treatments when I get back to Portland." You expected to continue those treatments?

A. No, I don't expect to.

Q. "The interior of the Pullman car in which I was hurt was dark at the time of my injury but this had nothing to do with my injury at all as I simply turned over and fell right out of the berth."

You say that is not true. You did not turn over?

A. No.

Q. "I grabbed onto the pole at the edge of the berth as I fell and broke the force of my fall considerably." You say that is not true?

A. Never caught onto nothing.

Q. "I didn't seem to fall hard." What would you say about that now?

A. Well, I will tell you the whole truth of it. They misrepresented that to me. That was why my sister was there with me all the time in the room. They evidently had this all fixed up. He sat there and waited until after my sister went out of the

(Testimony of Maggie Mae Teutschman.)

room and went over to her room and I laid there all alone. I was laying on my back facing the wall, and a man came in with [67] a piece of paper in his hand and said, "Mrs. Teutschman, I have got a little form here that we will have to sign up so we can get you out of here and take you to San Francisco to the company's hospital."

So, I say, "Well, you had better call my sister. She will come here in a few minutes," because I had lost my glasses and I couldn't read a word, couldn't see one word from the other without glasses, and I said, "You call her and she will come right back."

He said, "Well, I don't think that is necessary. It is just a little form that we have got to take you out of here to take you to the hospital. You have got to get something done for your leg. You have been laying here——" So, he said, "I will read it to you."

I couldn't turn over until the nurse come to help me, so he said, "I will read it to you," so he read it to me, but he didn't read me anything like that.

Q. Do you remember calling his attention to certain errors in it when he read it to you?

A. No, didn't call any attention. He didn't read me this.

Q. Do you remember making some corrections in it and he making them for you?

A. I didn't make any corrections.

Q. Don't you remember putting your initial on some of those corrections? [68]

A. No, I don't remember.

(Testimony of Maggie Mae Teutschman.)

Q. I will call your attention to the first page. Notice where these words are crossed out. Are those your initials by that correction?

A. That is not mine.

Q. Aren't those your initials here? A. No.

Q. That is your initial over here?

A. No, I never make a "T" like that. This (indicating) is my signature.

Q. Isn't that just like the "T" down below? You don't think you signed that? A. No.

Q. How about this one up here? Do you recall signing that? A. No.

Q. You don't remember making any corrections or doing any crossing out? You don't remember making any of those corrections?

A. I remember signing it, but what I was supposed to sign was just a form that I was willing for them to move me out of the hospital and take me to the hospital in San Francisco. They telegraphed my husband that they were taking me down there the next day, so he bought a ticket straight through to San Francisco.

Q. Do you know where Mr. Zeller got all the information that is in this statement?

A. I don't know anything about that.

O. You don't know where he got it?

A. No. He didn't ask me nothing.

Mr. Strayer: That is all.

(Testimony of Maggie Mae Teutschman.)

Redirect Examination

By Mr. Ryan:

Q. This statement is not in your handwriting?

A. No, it is not in my handwriting.

Q. Do you remember the coach you rode in?

A. I do not.

Q. Do you know it now? Do you know whether it was Seat No. 11 in Car 66?

A. Seat No. 11, but I don't know what number the car was.

Q. Do you know the number of the Pullman car?

A. No.

Q. Do you know what happened to your Pullman ticket? Did you have your Pullman ticket with you at the time this statement was taken?

A. It is in my hand-satchel.

Q. You did not have it with you? A. No.

Q. Was your hand-satchel in the hospital?

A. Yes.

Q. Your sister was there in the hospital at the time?

A. Well, yes, she had a room at the hospital. She was sick herself but she would come over and sit with me and then go back [70] to her room.

Q. You were injured January 9th, weren't you?

A. Yes. Well, yes, I left Los Angeles on the morning of the 9th and then the next morning, you see, I was hurt.

Q. When did they take you to the surgery at the hospital. A. Where?

(Testimony of Maggie Mae Teutschman.)

Q. At Redding.

A. They never did take me to the surgery.

Q. Didn't they set your leg?

A. They never took me out of bed. They never done one thing for me, only gave me hypos.

Q. That is all they did?

A. They kept me under hypos.

Q. Had you been taking hypos at the time you signed this paper?

A. Yes. They gave me hypos all the time I was in there. They kept me under them all the time.

Q. Did you, at any time, sit down and tell the story to Mr. Zeller or any man?

A. Never talked to that railroad doctor in my life.

Q. This man that said he was going to take you to the Southern Pacific Hospital? A. No.

Q. Did he sit down and did you make a statement to him that he copied down?

A. I did not. He just come in and he told me, "Mrs. Teutschman, [71] I have got a little form that we have to have you sign so as we can take you out of this hospital and take you down to San Francisco to the railroad hospital."

The Court: What is the date on it?

Mr. Ryan: January 10th.

The Court: What time?

Mr. Ryan: No time stated.

A. No, it was not the 10th, because I had been in the hospital for three days before I signed that.

(Testimony of Maggie Mae Teutschman.)

Mr. Strayer: I don't know whether that "10th" means the date of taking the statement or the date of the accident.

Mr. Ryan: It is dated January 10th.

A. That is all false.

The Court: Was her leg set there?

Mr. Ryan: No, it was not set.

Mr. Strayer: I don't know whether the doctor testified about the splint.

Q. (By Mr. Ryan): Are you sure this statement here is the paper you signed when you talked to the man about going to the hospital at San Francisco?

A. I am telling you, I really didn't see the paper he had. I didn't see it.

Q. It could have been some other paper you signed on the 10th?

A. It could have been some other paper. I didn't sign anything on the 10th, I know, because they took me in the hospital on [72] the 10th about 2:30 at night and I was in there for, I guess it was three days and nights before I signed anything.

Mr. Ryan: That is all.

Mr. Strayer: That is all.

(Witness excused.)

The Court: Will you have more witnesses?

Mr. Ryan: I will have, yes, your Honor.

The Court: Who are they?

Mr. Ryan: I have a porter to testify how they make these berths up, and I have someone to testify about her condition before the accident.

The Court: How many witnesses will you have, Mr Strayer?

Mr. Strayer: I will have seven, your Honor.

The Court: We will start at 1:30 this afternoon.

(Recess was then taken until 1:30 o'clock p.m.) [73]

Court reconvened at 1:30 o'clock P.M., Tuesday,
September 9, 1947.

ALBERT LOCKE

was thereupon produced as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Mr. Locke, you reside where?

A. 1861 Southwest First.

Mr. Strayer: If your Honor please——

Mr. Ryan: I prefer to have my client at the table.

The Court: Will she keep quiet?

Mr. Ryan: I will instruct her.

The Court: I know you will. That is what you did this morning, but will she? That is the question.

Mr. Ryan: Yes, your Honor, I believe she will.

Q. You reside in Portland, Oregon?

A. I do.

Q. What is your occupation now?

A. Porter and janitor work.

Q. You work for the City? A. Yes.

(Testimony of Albert Locke.)

Q. You are not working for the Pullman Company? A. Not now.

Q. Did you ever work for the Pullman Company? A. I have, yes.

Q. How long did you work for the Pullman Company?

A. A year and a half or eighteen months, something like that.

Q. What kind of work did you do for the Pullman Company? A. Pullman porter.

Q. Pullman porter? A. Yes.

Q. Did you take any training to get that job?

A. I did.

Q. What kind of training did you take?

A. I took training in making beds and fixing the berths and service to the passengers in general.

Q. Did the Pullman Company give all prospective porters that training?

A. They did me. I don't know whether they gave them all that or not.

Q. Are you acquainted with the type of berth that had the curtain on the upper berth and a separate curtain on the lower berth? A. I am.

Q. Is that the berth that is in pretty general use on Pullman cars? A. It was at that time.

The Court: What do you mean by "separate"?

Mr. Ryan: There are two types of berths, your Honor. There is one that has a curtain completely from the top to the bottom.

The Court: The picture I have here, a pre-trial exhibit, is the single-curtain type. Show him the exhibit, Clerk.

(Testimony of Albert Locke.)

Q. (By Mr. Ryan): Are you acquainted with that type of berth?

Mr. Ryan: What number is on the back?

The Clerk: Defendant's Pre-Trial Exhibit No. 8.

A. This is something similar to what we used to call the "Semi-Grant." It has a separate curtain over the lower berth.

Mr. Strayer: A separate curtain?

A. It has a separate curtain over the lower berth.

Q. A separate curtain over the lower berth? Then, there is one that hangs all the way down from the top?

A. There is one on the top. I don't know whether they used one more or not, but there used to be one on the top that covers both berths. That is one single curtain.

The Court: There is no picture—What type do you claim that to be, Mr. Strayer?

Mr. Strayer: That is known as the Grant type, one curtain that hangs from the top to the bottom.

The Court: Get that picture then and stop this confusion. Show Mr. Ryan the first one. Which curtain are you going to claim was on this berth?

Mr. Ryan: We don't know what curtain was on this berth. [76] I want the witness to testify as to the correct curtain to be on the train at that time and how the curtains are used.

The Court: Are you going to produce testimony that this was the single-type curtain?

Mr. Strayer: Yes.

(Testimony of Albert Locke.)

The Court: Have you got a photograph, an exhibit?

Mr. Strayer: They are all the same, just different views of the same curtain, your Honor.

The Court: This is a single curtain?

Mr. Ryan: This is a single curtain, yes.

Mr. Strayer: This is a single curtain, your Honor.

The Court: Show it to Mr. Ryan. He says that is a single curtain.

Mr. Ryan: This is a single curtain.

The Court: It doesn't look like it to me.

Mr. Strayer: There is one curtain. They are split about halfway in to the center, where they divide. They are all one curtain.

The Court: They are divided crosswise?

Mr. Strayer: Yes, about half the width of the curtain.

The Court: Let us settle this now, if we can. You mean, it is not one piece of fabric?

Mr. Strayer: It is all joined into one piece, yes. I think this photograph, No. 5, will demonstrate what I mean. It extends clear across half of one berth and half of the next berth. It [77] is split about halfway across, crosswise. The view on this other photograph, No. 8, is exactly the same curtain with the exception it shows a part of the two curtains which are split.

The Court: All right. Go ahead.

(Testimony of Albert Locke.)

Q. (By Mr. Ryan): As a Pullman porter, in making up an upper berth, what would be your duties, in connection with a berth of this type?

A. Well, my instructions were to—after I made the berth, to assist the passenger into it, to instruct them how to come in and out of the berth; tell them if they needed anything to ring the bell and I would come and assist them in and out of the berth.

Q. What would you do with regard to the curtains?

A. I would fasten it when I put the passenger in the berth.

Q. By fastening it, where would you fasten it?

A. Fasten at the bottom; fasten at the edge of the berth where there is provision for——

Q. That is where these buttons are?

A. Sure; there is where they provided to fasten your curtain on and fasten the passenger in.

Q. The passenger getting in the berth, would the curtain be apart?

A. It would have to be for them to get in there.

Q. Who would pull the curtain together?

A. I would. [78]

Q. Had you been instructed to do that?

A. I was instructed to do that.

Q. Do they provide a web netting in berths of this type?

A. On some types of berths. Those that I have worked on have had a web netting for the front and back.

(Testimony of Albert Locke.)

Q. Would there be a web netting provided for this type of berth?

A. I wouldn't know about this type, but you take the type that does not have this at all—they have a type of curtain that swings clear from the top railing to the floor. They have had that type of curtain, a type of curtain provided with a web in front and back.

Q. This type?

A. I wouldn't know about this type of curtain.

Q. If that curtain were pulled, not buttoned in the middle but pulled to the middle——

A. Without being buttoned in the middle, they are going to fall out.

Q. If it were fastened right there (indicating)——

A. Couldn't fall out if it was fastened; couldn't fall out if this curtain was pulled and fastened to this rod; they couldn't fall out.

Q. That is a safety device that is used ordinarily?

A. That is a safety device.

Q. That is the porter's job to fasten it? [79]

A. The porter's job to fasten it.

Q. To fasten it every night after he makes the berth?

A. After he makes the berth, after the passenger is in this bed. If they want to come out, you are supposed to ring and you go and get a ladder and assist them down.

Q. After the passenger is in bed, does the porter have any duties?

(Testimony of Albert Locke.)

A. The porter is required to watch your car, patrol back and forth and, if you see anything wrong, I would go there and see what it was, if it was anything out of the way, and straighten it out.

Q. Have any duty to call to the attention of the passenger as to how to pull the curtain or how to button the curtain?

A. No, didn't tell them anything about that; just fasten the curtain myself and tell them if they wanted anything, to call me.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Strayer:

Q. How long did you work for the Pullman Company? A. Worked for them in 1925.

Q. You worked for them about a year and a half?

A. Yes. Worked until the latter part of 1926, some time in November or October.

Q. What did you say about it? All the cars you were working [80] on had this type of protection?

A. You say, how many?

Q. All the cars you worked on had this web type of protection?

A. Not all of them didn't have; some did; some of them had the same curtain type; some had a different type of curtain—two individual curtains making four curtains altogether, two for the top and two for the bottom.

(Testimony of Albert Locke.)

Q. The web has not been in use for a number of years.

A. Not that I know of; it has been twenty years since I worked for the Pullman Company.

Q. This type of curtain shown in the photograph is still an older curtain?

A. Still an older curtain, yes.

Q. You have had no experience at all with this type of curtain?

A. Not with this type of curtain.

Q. Have you ever seen this type of curtain?

A. Never saw it until just now.

Q. When you testify as to how you were accustomed to put a passenger in a berth and button the curtain, you are talking about a different kind of curtain?

A. Talking about a different curtain than what this shows.

Q. You do not know of your own knowledge that it is necessary to unbutton this curtain in order to get in a berth or not?

A. No, sir, I couldn't say.

Q. You don't know but what it might be possible to slide this [81] (indicating) on the rod and get in and out of the berth without unbuttoning?

A. I don't know but what it would be.

Q. With this type of curtain, in order for there to be any curtain at all on the lower berth, there would have to be a curtain on the upper berth?

A. Would not have to be fully drawn. This type of curtain would not have to be fully drawn on the upper berth, but the lower berth could be closed.

(Testimony of Albert Locke.)

Q. Would have to be separated?

A. Would have to be separated because they are both joined together.

Redirect Examination

By Mr. Ryan:

Q. That would not necessarily mean that the curtain would have to be buttoned?

A. No, would not necessarily have to be buttoned.

Mr. Ryan: That is all.

(Witness excused.) [82]

VIOLET HISER

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Where do you live?

A. 1867 Southwest Fourth.

Q. Are you acquainted with Mrs. Teutschman?

A. I am.

Q. How long have you known her?

A. Three years.

Q. Describe the way she got around before this accident?

A. To be truthful, I didn't know there was anything wrong with her. She got around well. I

(Testimony of Violet Hiser.)

didn't know there was anything wrong with her. She never told me that she had a bad hip. I never suspected it.

Q. Did she have any difficulty dressing?

A. Never to my knowledge before this accident.

Q. I mean, now?

A. Oh, yes. Now she does, yes, sure.

Q. Have you helped her?

A. Yes, I have.

Q. How much help does she need in dressing?

A. She cannot—I do know her husband has to put her stockings on of a morning before he leaves, if she goes downtown. [83]

Q. Have you ever helped her put on her dress, put on her clothes? A. I have, yes, sir.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Strayer:

Q. Do you live at the same place?

A. No, I don't.

Q. Is it Mrs. Hiser? A. Mrs. Hiser.

Q. How far away do you live from Mrs. Teutschman?

A. I live about two blocks altogether now.

Q. Had you formerly lived closer by?

A. I lived in the same house with her. I have also taken care of her when she was——

Q. Were you living in the same house with her at the time she went down to California?

A. No, I wasn't.

(Testimony of Violet Hiser.)

Q. You lived some block away at that time?

A. Yes.

Q. Had you seen her recently before she went to California?

A. Yes, I had seen her right along.

Q. Of course, you did not go to California with her?

A. Oh, no.

Q. You do not know what kind of condition she was in when she [84] started back from California?

A. No, I don't.

Q. How long had she been back when you saw her again?

A. I didn't see her until she came home from the hospital.

Q. That has been about how long ago?

A. Well, that was in March. Yes, about that time.

Q. A little over a year ago?

A. Yes, a year and a half ago.

Q. Have you seen her frequently since that time?

A. Yes, I have.

Q. Been over to her house?

A. Yes, sir.

Q. Does she seem to be able to get around the house all right?

A. Not very well.

Q. Does she do any work?

A. Not that I ever seen her do. I know Mr. Teutschman has about all the work to do.

Q. Pardon?

A. Mr. Teutschman does about all that is done.

(Testimony of Violet Hiser.)

Q. She does not do any work around the apartment, then?

A. I don't think she is able to get around, to go up and down steps.

The Court: How about her crutch? Does she walk with her crutch all the time?

A. Yes, she does. [85]

Q. (By Mr. Strayer): Who dresses her, usually?

A. Well, she has to have Mr. Teutschman, of course, now. I am employed at the Physicians & Surgeons Hospital, but I do know Mr. Teutschman still has to put her stockings on.

Q. How recently have you had that experience of seeing her have someone else to put her stockings, her shoes and stockings on?

A. It wasn't so terribly long ago she wanted to go downtown and I helped her dress.

Q. How long ago was that?

A. It has been about two months ago.

The Court: How would she get downtown?

A. In a cab.

Mr. Strayer: I think that is all.

Mr. Ryan: That is all.

(Witness excused.)

Mr. Ryan: That is our case.

Mr. Strayer: We would like to offer in evidence two depositions, those of Dr. H. R. McVicker and Archie V. Fraser. I understand your Honor has read them and I guess there is no particular point in reading them.

The Court: No. If there is anything you want to call my attention to in the argument, I would be glad to hear it.

Mr. Ryan: I wonder if I might call one more witness?

The Court: Yes. [86]

ALBERT TEUTSCHMAN

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. Mr. Teutschman, you are the husband of Mrs. Maggie Mae Teutschman, the plaintiff?

A. That is right.

Q. Will you tell the Court what your wife's condition was prior to this accident? How did she get around?

A. She got along all right. She done the housework. She took in some washing and done the roomers' washing and got along all right.

Q. Did she do the housework around the apartment?

A. Yes, kept up the apartments and even done some washing for the tenants.

Q. What is her condition at the present time in regard to her ability to work?

A. It is not so very good. She can't get around very good.

(Testimony of Albert Teutschman.)

Q. Does she still need help dressing?

A. Yes, I have got to dress her if she wants to go anywheres.

Q. Do that every day?

A. Yes, got to put her stockings on, if she puts them on.

Q. Does she still use her crutches all the time?

A. Most of the time, yes. She has a hard time getting around [87] without them.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Strayer:

Q. Were you married at the time she had that first injury about sixteen years ago?

A. Yes. She got hurt.

Q. What? A. She got hurt on that wreck.

Q. Did you know about the sore she had on her upper leg or hip? A. Yes.

Q. The abscess? A. Yes, I knew that.

Q. She had that for a great number of years?

A. Yes, since 1931.

Q. Did you understand that was osteomyelitis?

A. What?

Q. Did you understand that the trouble she was having was osteomyelitis? A. Sorry.

Q. Did you understand that the sore she had on her leg was osteomyelitis?

A. Well, some call it this and some call it that.

Q. Did some of the doctors call it that?

A. Yes. [88]

(Testimony of Albert Teutschman.)

Q. Did you know of the treatment she had in California for it?

A. Yes, she told me she thought it might help if they gave her some penicillin shots.

Q. Did she say that before she left, or after she got back?

A. Her sister wanted her to come down there many times.

Q. What?

A. Her sister wanted her to come down there many times, so she came up and she went down with her, and thought it would be good for her to stay down in California for a while.

Q. Did you know she was going to have this treatment?

A. No, she didn't say nothing.

Q. You did not find out about it until she got back?

A. She wrote to me.

Q. You went down to Medford and came back with her?

A. Yes. The railroad company came up and told me that she got hurt, so, then, her sister called up and told me they were going to take her down to San Francisco to the hospital, so I got a round-trip ticket and went down there. Before I left, I called up and told them if anything should happen——

Q. I want to know: You went down and brought her back, did you?

A. I went down there and fetched her back.

(Testimony of Albert Teutschman.)

Q. Do you know whether this abscess she had was still running at that time?

A. I think there was still some sore, yes.

Q. Had your wife had trouble walking before she had this accident? [89]

A. How?

Q. Had she had trouble walking around before the accident?

A. Not a bit.

Q. Did she limp some?

A. Very little.

Q. Did she limp at times?

A. Yes.

Q. Had she done that ever since her first accident?

A. No. She got along pretty good. At first, when she got hurt, it was pretty bad and then later on she got along all right.

Q. At the time she left for California, was she limping?

A. When she went to California?

Q. Yes.

A. She went down the last part in September.

Q. Was she limping at that time?

A. Not very much, I don't think.

Q. She was limping some?

A. Very little.

Q. Was she limping some?

A. Yes, it was a little sore. It would bother her at times.

Q. Did she complain about her leg hurting her at that time?

A. No, she didn't say much; didn't hurt much. At first, she had quite a bit of trouble but the last year or so she got along fine. [90]

(Testimony of Albert Teutschman.)

Q. You said when she went to California her leg was a little sore. You mean, it was hurting her?

A. She didn't say nothing.

Q. What do you mean by saying it was a little sore?

A. Well, of course, it bothered her some at times.

Q. What?

A. It must have bothered her at times. She did limp a little at times.

Mr. Strayer: That is all.

Redirect Examination

By Mr. Ryan:

Q. On your trip back, how did you come back?
In a compartment?

A. Yes, we had to get a compartment.

Q. Where did your wife sleep?

A. She slept in the lower berth.

Q. Where did you sleep?

A. I slept in the upper berth.

Q. Anything said about your wife's accident by the porter at that time?

Mr. Strayer: Just a moment. I object to that, your Honor.

The Court: Sustained.

Mr. Ryan: That is all.

(Witness excused.)

Mr. Ryan: The plaintiff rests.

Plaintiff Rests. [91]

DEFENDANT, THE PULLMAN COMPANY'S,
TESTIMONY

Mr. Strayer: I understand the depositions are admitted, your Honor?

The Court: They are admitted.

(Deposition of Dr. H. R. McVicker, taken at Redding, California, August 4, 1947, thereupon received in evidence and marked Defendant's Exhibit No. 11.)

[Defendant's Exhibit No. 11 set forth at pages 184 to 203.]

(Deposition of Archie V. Fraser, taken on behalf of defendant, August 6, 1947, thereupon received in evidence and marked Defendant's Exhibit No. 12.)

[Defendant's Exhibit No. 12 set forth at pages 204 to 219.]

E. L. DEERING

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Your name is E. L. Deering?

A. That is right.

Q. Where do you live, Mr. Deering?

A. How is that?

Q. Where do you live? Where is your home?

A. Aberdeen, Washington.

(Testimony of E. L. Deering.)

Q. What is your occupation? [92]

A. The last work I done was working for the County, Grays Harbor County.

Q. Were you formerly a sheriff?

A. I was a deputy sheriff.

Q. Where was that?

A. Grays Harbor County.

Q. You are married? A. Yes, I am.

Q. Were you riding on a train coming back from California up towards Portland on the 9th of January, 1946? A. I was.

Q. Was Mrs. Deering with you?

A. Yes, she was.

Q. Where did you get on the train?

A. Merced.

Q. Merced, California? A. Yes.

Q. Did you change trains at Martinez?

A. Yes, we did.

Q. Did you get off the train there?

A. Yes.

Q. Where did you wait for your next train?

A. In the depot.

Q. In the waiting room?

A. In the waiting room at the depot. [93]

Q. Mrs. Deering was with you?

A. Mrs. Deering was with me, yes.

Q. Did you happen to notice Mrs. Teutschman, the plaintiff in this case? A. Yes.

Q. Do you recognize her here today as the same one you saw at that time? A. Yes.

(Testimony of E. L. Deering.)

Q. Where was she sitting with reference to you when you first saw her?

A. There were two seats across the depot this way (illustrating), about seven or eight feet apart. I was sitting on this seat, and she was on that seat in that direction from me.

Q. About how far away?

A. Oh, about seven or eight feet, something of the kind.

Q. She was facing you?

A. She was facing me.

Q. Can you tell us how she was dressed?

A. Well, I didn't particularly notice that, only that she had on a plaid jacket, kind of a jacket that comes around down like that (illustrating).

Q. Did you notice what kind of luggage she had with her?

A. Yes. I noticed in the seat behind her was that long violin case and some other stuff, but what it was I don't know.

Q. Tell the Court, while you were sitting there waiting for [94] your train, just how Mrs. Teutschman's actions were; tell us what she did and how she acted.

A. She attracted my attention to her on several occasions. I thought at the time that she was tead up a little bit, that she had been drinking something; what, I didn't know, but I thought that at the time. That is what attracted my attention.

(Testimony of E. L. Deering.)

Q. Can you tell us what she did?

A. Why, yes. If she caught you looking at her, she would smile at you; she smiled not only at me but at others.

Q. Was she sitting there all the time?

A. No, she wasn't.

Q. Did you see her get up?

A. She got up and went around that end of the bench and went, I suppose, to the rest room; I wouldn't say.

Q. Did you notice whether she had any difficulty in getting up or walking?

A. I didn't notice her getting up but in walking she had a limp in her right leg. As she came back to sit down she was limping in that leg. She sat down this way (illustrating) and she kind of grinned as she sat down, protecting her right hip.

Q. You said you had the impression she was tead up?

A. I did.

Q. Elaborate on that, please. What do you mean?

A. I thought she had been drinking booze. That is what I thought about it. I thought she had had too much booze. [95]

Q. Did you ever get close enough to her to be able to tell whether she had been drinking?

A. I never was closer than seven or eight feet.

Q. When your train arrived, I take it you took your train?

A. We took our train.

Q. Did you see her after that?

A. Never saw her no more after that.

(Testimony of E. L. Deering.)

Q. This is the lady you are talking about now, Mrs. Teutschman, here, the lady you saw in the station?

A. That is the lady I saw in the depot.

Mr. Strayer: That is all.

Mr. Ryan: That is all.

(Witness excused.) [96]

MRS. ESTHER DEERING

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Your name is Mrs. Esther Deering?

A. Yes.

Q. You are the wife of the gentleman who just testified?

A. I am.

Q. You are from Aberdeen?

A. Yes.

Q. You were with your husband on this occasion he told us about?

A. I was.

Q. Do you recall seeing Mrs. Teutschman in the waiting room at Martinez?

A. I do.

Q. Will you tell the Court what attracted your attention?

A. Her peculiar actions drew my attention, the way she was dressed; I think odd, very odd, looked peculiar. She had a red plaid blouse on

(Testimony of Mrs. Esther Deering.)

that hung loose, quite long. That is what drew my attention in the first place. Then, she was very peculiar in her actions.

Q. What did you see her do?

A. I seen her get up and go around the bench to the rest room [97] and then come back in. She come back the other end. When she sat down there, she sat down on the left hip and grinned as she sat down.

Q. Did she appear to be in pain?

A. Only just that she grinned when she sat down. She made quite a bit of fuss. I said, "That lady must be hurt."

Q. Did you notice when she walked whether she limped?

A. Very bad; at least, I thought it very bad.

Q. Did you see her any more after you left there? A. Didn't see her any more.

Q. You have not seen her since then until today?

A. Not until today.

Mr. Strayer: That is all.

Mr. Ryan: No questions.

(Witness excused.) [98]

L. RAINEY

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Where is your home?

A. Oakland, California.

Q. You are employed as a porter by the Pullman Company, are you not?

A. Pullman porter.

Q. How long have you worked for the Pullman Company? A. Since 1943.

Q. Were you employed on this train in which Mrs. Teutschman was riding at the time she was injured? A. I was the porter.

Q. Where did you board that train?

A. Oakland Pier.

Q. What car were you assigned to?

A. I forget the number of the car, but the car was——

Q. Can you tell us what type of Pullman berth and curtains were on the car, what the car was equipped with?

A. This was a sixteen-section Tourist car. Each berth had fourteen buttons to fasten the curtains.

Q. Did it have the type known as the Grant-type curtains, do you know? I will ask you to look at these photographs which [99] are marked Defendant's Pre-Trial Exhibits 5 to 8 and tell us

(Testimony of L. Rainey.)

if they represent or show accurately the type of curtains that were used in that car?

A. This is the curtain here (indicating.)

Q. Pardon? How about the others?

A. This is the curtain, the same type of curtain. These are all the same type of curtain.

Q. Are they same type used on this car we are speaking about? A. Yes.

Mr. Strayer: I offer the pictures in evidence, your Honor.

The Court: Admitted.

(Four photographs thereupon received in evidence and marked Defendant's Exhibits No. 5½, 6, 7 and 8, respectively.)

Q. (By Mr. Strayer): Will you describe for the benefit of the Court the manner in which these curtains were attached to the berth?

A. Well, four buttons down——

Q. In the first place, how did you hook the curtain on? Was there a rod at the top?

A. A rod at the top. You make your lower berth first, then you make your upper berth, then you put your curtains on. Got hangers that hang across the rods. Then you fasten your lower berth curtains on. Then you fasten your upper berth curtains [100] on; that is, on both sides of the berth.

Q. In the center, the dividing line between the upper berth and the lower, is there a portion of the curtain that wraps around the rod?

A. Both lower and upper.

(Testimony of L. Rainey.)

Q. Did you button those flaps around the rod?

A. Yes.

Q. From the photographs, it looks as if the curtains are built in one piece, with a split in the center. Will you describe how they are built?

A. The curtains are this way: They cover half of two berths, but they are one curtain. But they cover half of two berths like 12 and 14. One curtain covers half of each berth.

Q. Where is the split portion of the curtain?

A. The split portion?

Q. Yes. About how wide is that place where the split occurs in the curtain?

A. There is no space between them. They both drop down. You can put one down and one up and fasten each curtain, if you want to make an SOS out of the berth.

Q. What is an SOS?

A. That is a word we use.

Q. That is not what I am getting at. I want to know if these flaps were taken apart, how wide would they open up?

A. You can push them clear back as far as the berth, the upper [101] curtain.

Q. The curtain is only split part way, as I understand.

A. Only split part way.

Q. Yes. You could not push the curtain back any further than the split, could you?

A. I don't quite get what you are speaking about.

(Testimony of L. Rainey.)

Q. We will take Exhibit No. 5, I think it is. It looks like the curtain was split about half of its width.

A. This here?

Q. I mean this split.

A. This part here? Where you button both ends of this curtain here?

Q. Let us take the photograph, Exhibit No. 8. Can you explain it from that?

A. When this is pushed around, is that what you mean?

Q. Yes.

A. This top curtain can go over to about here (indicating), but the bottom curtain can only come to here (indicating).

Q. How wide can you spread the top when opened?

A. Oh, just about to this button here (indicating).

Q. How wide would that be? Probably three feet, would you say, roughly?

A. Three feet or four. If you take these rods down, you can spread it still further, if you take these hangers off the rods, like this here (indicating); then you can push it back [102] to this headboard.

Q. In order to have a curtain on Lower 14, would you have to have a curtain on Upper 14?

A. To have a curtain on Lower 14?

Q. Yes.

A. This type of curtain, you have to have the top curtain all in one piece.

(Testimony of L. Rainey.)

Q. Because the curtain is divided between the two berths, 12 and 14.

A. It covers half of each berth.

Q. When you got on the train at Oakland, what did you do about making up the berths?

A. Made down half in the yard and the other half on the road, after leaving Berkeley, which was about 7:15.

Q. Can you recall at this time, by the time you got to Martinez, whether all this space had been made down?

A. Hadn't quite finished.

Q. Do you recall first seeing Mrs. Teutschman?

A. Yes.

Q. Where was she when you first saw her?

A. She was about five or six cars—about five or six car lengths from the station, coming my way.

Q. Did you notice what luggage she had with her?

A. Well, at that distance, I didn't know what she had then, but she was coming towards the Pullman cars. [103]

Q. As she got closer to you, were you able to distinguish what she had with her?

A. Well, I knew she had a violin case with her.

Q. What can you say as to the manner in which she was walking?

A. She was very lame; took her quite a while to get from the station up to the car.

Q. When she got up to where you were, was there anyone else with you?

A. The porter in the next car and the conductor, the train conductor.

(Testimony of L. Rainey.)

Q. The conductor was Mr. Paisley?

A. Yes.

Q. What, if any, conversation took place when she arrived at the car?

A. Well, she walked up and she wanted to get on the train. I asked her to see her Pullman ticket. She showed it to me, and I told her that her ticket called for the next train that was coming behind us.

Q. What was the number of the train you were on?

A. 18, the Oregonian. Her ticket called for Train 20.

Q. What was the rest of the conversation, when you told her that her ticket was for the next train?

A. The conductor said, "Let her get on. We will have some space for her in your car." I helped her up to my car.

Q. You saw her ticket at that time. Did it call for an upper [104] berth or a lower berth?

A. Upper berth.

Q. Do you know whether or not you had any lower berths available on that car?

A. Not one.

Q. Did you have a talk with Mrs. Teutschman about whether she was to get an upper berth or a lower berth?

A. I don't recall talking about that, because she was not supposed to be on the train. I don't know how it was arranged on the next train.

(Testimony of L. Rainey.)

Q. What did you do about providing her with a berth?

A. Well, Conductor Paisley assigned her to Upper 14. That was her berth. I hadn't got that far then. When I made the berth up, then I helped her in the berth and, automatically, I pulled the curtains.

Q. Were you here this morning when she testified? A. Yes.

Q. Did you hear her testimony that a man got out of the berth? A. Yes.

Q. What are the facts?

A. The reason I say a man could not have got out of the berth is that that berth was not made.

Q. Had the berth been occupied prior to the time of getting to Martinez? A. No.

Q. The berth had not been made up? [105]

A. Had not been made; had not been occupied.

Q. Any reason why anyone would have been in it? A. No, sir.

Q. When you got the berth made up, did you help Mrs. Teutschman into the berth?

A. I helped her into the berth. She made the statement to me she just came from Los Angeles to see a doctor down there; and that she had spent some nine hundred and some-odd dollars on it and it didn't do any good. That is as far as she went.

Q. Was that all the conversation you had?

A. She went up in the berth, yes.

(Testimony of L. Rainey.)

Q. In making up that particular berth, let me ask you: Do you button these protective flaps down? A. Yes.

Q. At the lower end of the upper curtain?

A. Yes.

Q. Do you have to unbutton them in order—Did you have to unbutton them in order for her to get in the berth? A. No, just pull it aside.

Q. After she was in the berth, did you close the berth?

A. Took both ends and pulled them like that (illustrating). They came together, but I didn't button—from the top down, I didn't button them.

Q. Those buttons were on the inside?

A. Those buttons were on the inside, for her to button. [106]

Q. They are intended for the passenger himself to button? A. Yes.

Q. How about the hooks up on the top rod? Were they hooked over the rod A. Yes.

Q. You are quite sure of that?

A. Positive.

Q. Can you say whether you noticed anything about Mrs. Teutschman, when you first saw her, what condition she was in?

A. Well, not anything more than usual. We carry a lot of people and you see so much you don't pay a whole lot of attention.

(Testimony of L. Rainey.)

Q. Was your attention called to Mrs. Teutschman again during the night?

A. Well, at a quarter of 2, I got up—I go to bed from 10 to 2—and at a quarter of 2 was the first I knew she fell out of the berth.

Q. What happened then?

A. Well, the S.P. news agent told me that a lady fell out of berth—out of Upper 14. I went out in the car to see what it was all about. The conductor says, “Going to take her off at Redding,” and she was groaning.

Q. What was her condition when you saw her?

A. When I first looked in there, she was asleep; then she would wake up. When they taken off, she groaned a whole lot [107] and complained of her arm. That is what I thought, that she had hurt her arm instead of her hip.

Q. Did you try talking with her?

A. No, I didn’t.

Q. Did you help take her off the train at Redding? A. Yes.

Q. Did anyone talk with her while you were helping to take her off?

A. I think they tried to get her name, but whether they did or not I don’t recall now.

Q. After you heard about the accident, did you look at Berth 14? Did you examine it?

A. Yes.

Q. What did you find?

A. Just like I made it up. The curtains were still together, fastened.

(Testimony of L. Rainey.)

Q. They were still fastened, the same as you had made it up? A. Yes.

Q. Were they separated, the front curtains?

A. Right about this far (illustrating) when I looked in.

Q. About six inches or a foot? A. Yes.

Q. Were the buttons unbuttoned?

A. No, they were not.

The Court: What buttons are you talking about?

Mr. Strayer: The protective buttons at the bottom of the upper berth.

A. They were still fastened.

Q. Did you look at the berth again the following morning?

A. Yes. The S. P. man, he and I checked the berth again.

Q. Did you find the condition the next morning different? A. No.

Q. I presume you must have made up the berth the following morning?

A. I put the berths away, yes.

Q. Did you find anything?

A. I found two pairs of shoes and a little capsule.

Q. A yellow capsule? A. Yes.

Q. What did you do with the capsule?

A. I gave it to this S. P. news agent.

Mr. Strayer: I believe that is all.

(Testimony of L. Rainey.)

Cross-Examination

By Mr. Ryan:

Q. Were you talking to Mrs. Teutschman outside the car where the conductor was when she first walked up there? A. Yes.

Q. What was the conversation at that time?

A. About getting on this train, on the wrong train.

Q. Did she make quite a fuss? [109]

A. Well, they generally do.

Q. She finally made such a fuss the conductor decided to let her get on the train?

A. Decided to let her get on the train.

Q. She went into your car?

A. Into my car.

Q. Did she say anything to you after she got in there?

A. Not after she got in. I was still loading passengers up on the outside.

Q. When she was getting in the berth, did she say anything to you? A. Yes.

Q. What did she say?

A. She said she had been to Los Angeles taking treatments; she had spent nine hundred and some dollars and it hadn't done any good and she was sorry she went.

Q. Did she want a lower berth?

A. Yes, they all want lower berths; none available.

(Testimony of L. Rainey.)

Q. Did she ask for a lower berth?

A. I don't recall.

Q. Did she say she had never ridden in an upper berth?

A. Never said that to me.

Q. Did she ever try to get in the berth herself?

A. No, I had a ladder for her. I knew she was crippled.

Q. She did not try to get in without the ladder?

A. No.

Q. You made up the berth for her particularly?

A. Well, I made them all up.

Q. This Upper 14, that was the first berth you made up after she got in the car?

A. Well, I wouldn't say.

Q. You had about half the car made up?

A. Had over half the car made up at Martinez.

Q. As soon as you got 14 made up, you told her to get in?

A. She was ready to go to bed.

Q. She was standing there, waiting for it?

A. No, she was in the ladies' room.

Q. Ordinarily, a Pullman porter pulls the curtains together in the upper berth?

A. Yes.

Q. You tell them to button up inside, ordinarily?

A. No, I don't.

Q. You are instructed to tell them to button, aren't you?

A. No, sir.

Q. As I understand it, this whole thing goes on two berths, adjoining berths; this is 14 and this is part of 16. If this inside curtain was pulled back, it would not affect the lower berth at all?

A. No.

(Testimony of L. Rainey.)

Q. Can pull it back about two-thirds of the way?

A. Yes.

Q. Is there any other protection in the upper berth at all?

A. There is your protection here (indicating). These flaps here is your protection here, all across here (illustrating).

Q. This is connected on this curtain here (illustrating)?

A. This part is connected on this curtain (indicating).

Q. If this curtain is pulled and that is not buttoned, could you fall out of there if you were lying down?

A. No. Have to shove this flap up——

The Court: These flaps, what are the dimensions there? He has not told us.

Q. (By Mr. Ryan): But I say, from here to here (indicating)?

A. You mean from here to here?

Q. Yes. A. Oh, let's see——

Q. How high is it, from here to here?

A. Oh, that is about—you mean from this rod to where the buttons are?

Q. Yes. A. Oh, about six inches.

Q. How high is this whole curtain from the top of the top berth to the bottom of the lower berth?

A. I would say about four feet, probably longer.

Q. How long is the berth? Do you know the length of the berth? Do you know how long the berth is? [112] A. Not exactly.

(Testimony of L. Rainey.)

The Court: I wanted to know how high this is.

Mr. Ryan: That was about six inches, I understand.

Q. The only place these curtains are connected so that the one would affect the other and hang completely to the floor is along the edge of the berth, isn't that right?

A. No—The only thing there now?

Q. That is all one piece, but the connection is along the edge of the berth, isn't it?

A. The connection?

Q. Yes.

A. Yes, just one piece across here.

Q. That is what I understand, but the connection between the upper and lower part of the flap is along the side of the berth, between 12 and 14; no connection between the middle——

A. No, just button here. You buttoned those.

Q. Did Mrs. Teutschman ring for you during the night?

A. No.

Q. Were there any other berths available in this car outside of 14?

A. No.

Q. That was the only berth left?

A. Yes.

Q. You usually—you really made that up especially for her, didn't you? [113]

A. No, I made everything because everything was usually sold.

Q. Quite a bit of traffic at this time?

A. Quite a bit.

(Testimony of L. Rainey.)

Q. It kind of put you out, didn't it, when she insisted on getting on the car?

A. No, it didn't put me out. As long as we had space she could take it as well as anyone else.

Q. She made quite a fuss about it?

A. When she first came up she was talking something about it but I didn't pay very much attention.

Q. Do you think she looked a great deal different than now?

A. Well, I couldn't—I never stare hard enough to tell——

Mr. Strayer: I don't understand.

A. I never stare at my passengers hard enough to tell, then and now, the way they look.

Mr. Strayer: You don't stare at your passengers?

A. That hard, no.

Mr. Ryan: That is all.

Redirect Examination

By Mr. Strayer:

Q. With this type of curtain you had on this car, you don't use any webbing or any other protection? A. No.

Q. The buttoning of these flaps is sufficient protection? A. That is sufficient. [114]

Q. If these flaps are buttoned and the curtains are pulled together, is it possible for a passenger to roll out of the upper berth?

A. If they are not fastened?

(Testimony of L. Rainey.)

Q. No, I mean——

A. If they are fastened?

Q. If they are fastened and pulled together, is it possible to roll out?

A. No, impossible to fall out, for a passenger to.

Q. That would be true whether the buttons on the inside were fastened?

A. They couldn't roll out.

Q. Your testimony is that these flaps were definitely buttoned? A. Yes.

Q. You say Mrs. Teutschman did not try to get in the berth by herself? You recall specifically what your testimony was on that?

A. When she came out of the ladies' room, I had a ladder for her because I saw she was crippled when she got on.

Q. There is testimony by Mr. Fraser, who was in Lower 14, by deposition. His testimony, as I recall, was that he heard Mrs. Teutschman trying to get in the upper berth by herself and hearing you tell her not to do it, that you would get a ladder for her. Do you remember such a conversation as that? A. No, I don't recall. [115]

Q. Pardon? A. I don't recall that.

Mr. Strayer: That is all.

Recross-Examination

By Mr. Ryan:

Q. You remember her saying she did not want an upper berth, that it was all Greek to her, she did not know anything about them?

(Testimony of L. Rainey.)

A. I don't remember anything like that.

Q. It was your duty to button the flaps; if they were not buttoned, you would be called on the carpet?

A. Yes, very much so.

Mr. Ryan: That is all.

(Witness excused.) [116]

ROY D. STEPP

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Do you live in Portland at this time?

A. I live in Oakland, California.

Q. By whom are you employed?

A. The Pullman Company.

Q. Were you so employed in January, 1946?

A. Yes.

Q. Did you get instructions to make an inspection of Car No. 4199, Pullman Car No. 4199?

A. I did, sir.

Q. Did you make an inspection of the car?

A. Yes, sir, I did.

Q. On what date was that?

A. I don't remember the exact date, but I know it was around a couple of years ago.

Q. Was it shortly after January 10, 1946?

A. Yes, somewhere about that time, I judge.

(Testimony of Roy D. Stepp.)

Q. Do you know where the car had come from when you examined it?

A. No, I don't. I was just told the number of the car and what the section was, and to inspect the curtains.

Q. Do you recall what section it was you inspected? [117] A. 14.

Q. What was the purpose of the inspection?

A. To hang these curtains up—to put up the curtain rods and then hang up the curtains; button up the buttons and pull on the curtains to see if the buttons were in good shape; and to inspect the hooks on top of the curtains and so on.

Q. What is the practice on these Pullman cars in regard to the way curtains are kept?

A. Put them underneath the mattress. When they make down the bed, the mattress is already up in the upper berth, and one is put down after the seats are pulled out and then you have one for the upper berth.

Q. Was the curtain found under the mattress? Always is in the same place, is it?

A. Yes. The curtains for 14 are marked in big letters "14."

Q. Ordinarily, then, the section number is on the curtain?

A. Yes, in big black letters. It is sewed right into the curtain, where the porter can see just what curtain it is and so the porter gets the curtain up in the right place.

Q. Do you recall whether these curtains here are marked? A. They are marked.

(Testimony of Roy D. Stepp.)

Q. Did you find any defects in these curtains?

A. No. Put the headboards in and the curtain will cover half of two berths like that (illustrating). The curtain will button into the headboard. That curtain cannot be flopped out. There [118] is a little rod in on this side (indicating).

Q. Did you find any defect at all in these curtains?

A. Couldn't find any defect in these curtains. Hung these curtains up and buttoned them right down the middle, Section 14, and tried them, couldn't find anything wrong with the curtains.

Q. Was anything wrong with any of the equipment around Section 14?

A. No. I tried the rods and all that; couldn't find anything wrong.

Mr. Strayer: That is all.

Mr. Ryan: That is all.

(Witness excused.)

B. A. PAISLEY

was thereupon produced as a witness on behalf of the defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Where is your home, Mr. Paisley?

A. In Seattle or, Vashon Island, rather.

Q. By whom are you employed?

A. The Pullman Company.

(Testimony of B. A. Paisley.)

Q. How long have you worked for the Pullman Company?

A. A little over thirty-seven years.

Q. Were you conductor on Car 4199, the car on which Mrs. Teutschman was riding when she was injured?

A. Yes, sir.

Q. Where did you board that car?

A. At Oakland Pier.

Q. Oakland Pier?

A. Yes.

Q. Where did the car come from before that?

A. The whole train starts from the pier. The car was right out of the yard.

Q. When cars are brought out of the yard, had they been in the yard immediately before that?

A. They go to the yard for cleaning and servicing. Everything is put away—— [121]

Q. Can you tell me whether Car 4199 had been used immediately before you took it out of Oakland Pier this day?

A. Not that day, no; comes right from the yard after it has been cleaned.

Q. It was cleaned as soon as it was set there?

A. Oh, yes.

Q. I take it, when it comes out of the yard the berths are not made up. When it comes out of the yard, the berths are not made up?

A. No. They had a practice of making the side of the car away from the station, making the berths on that side of the car.

Q. Who was your porter on this car?

A. Rainey.

(Testimony of B. A. Paisley.)

Q. Did he start making the berths as soon as you got out of the station? A. Oh, yes.

Q. What time did you leave the Oakland station? A. 7:15.

Q. Evening?

A. Evening of January 9th, yes.

Q. What train number was this? A. 18.

Q. Was there another train, Train No. 20, following you? A. Yes.

Q. How far behind you was that running? [121]

A. A little over two hours. I am not sure of the time they left there.

Q. An hour? A. About two hours or more.

Q. Do you know about what time you arrived at Martinez?

A. I would say about 8:30 or 8:40, something like that.

Q. By that time what was the situation regarding the making up of the berths of Car No. 4199?

A. Practically all of the berths were made up; maybe one or two sections were not made yet.

Q. What is the situation as to whether you had any lower berths available?

A. Everything was taken except one berth.

Q. So, as a practical matter, you had no lower berths available? A. Nothing available.

Q. Have you recently checked your working diagram of that train?

A. Yes, I have seen the diagram.

Q. Look at Defendant's Pre-Trial Exhibit No. 9 and tell me if that is the diagram of Car 4199 for that date? A. Yes, that is the one I used.

(Testimony of B. A. Paisley.)

Q. Pardon? A. That is the one I used.

Q. Does that disclose there were no lowers available at Martinez on that day?

A. There was nothing vacant there at all. [122]

Mr. Strayer: I offer the exhibit in evidence.

Mr. Ryan: No objection.

The Court: Admitted.

(Pullman car record, Car 4199, thereupon received in evidence and marked Defendant's Exhibit No. 9.)

Q. (By Mr. Strayer): Where did you first see Mrs. Teutschman on that night?

A. I saw her shortly after she left the station, coming towards the Pullman.

Q. How far away was she when you first saw her? A Oh, about three or four car lengths.

Q. As she got down towards you, what can you say about her appearance?

A. Well, she was limping. She carried an old shopping bag and a violin case. That is as much as I can say about her appearance at this time.

Q. Did she come up to you and talk to you?

A. She came up with the other passengers. The other passengers were boarding the train—quite a few got on there that night. When she came up there, I asked her for her ticket, to see her ticket. She showed a ticket, I think, for Train No. 20, and I told her her reservation was for that train, but she complained about having to go back to the station, so I told the porter, as long as we had space, and to save her going clear [123] back to the station, to take care of her.

(Testimony of B. A. Paisley.)

Q. Did you look at the ticket? A. Yes.

Q. Was it for an upper or a lower?

A. Upper 14.

Q. On Train No. 18? A. On No. 20.

Q. Your train was No. 18? A. Yes.

Q. Is it customary to allow a passenger to ride on a different train?

A. We are not permitted to accept tickets on other trains like that.

Q. How did you happen to do it in this case?

A. I took pity on her, on account of her condition and, as long as I had space, I thought I would take care of her. I had a redcap at Martinez to notify the conductor on the other train to cancel the space.

Q. When you say you took pity, I take it ordinarily you would not do it. Why did you do it in this particular case?

A. Well, she was rather poorly dressed and crippled. I thought it was the thing to do.

Q. Did she say anything to you that led you to believe you ought to try to accommodate her?

A. She complained about going clear back to the station again. [124]

Q. How far was it to the station?

A. At least six car lengths.

Q. When you say she was limping, was she limping hard or moderately? A. Quite bad.

Q. Did she appear to you to be in any pain?

A. No.

(Testimony of B. A. Paisley.)

Q. You said you agreed to give her an upper in your car. What instructions did you give about getting her an upper?

A. You mean to the porter?

Q. Yes.

A. I told him "Upper 14 is vacant. Make that up for her and put her in there."

Q. Did you help her on the train?

A. No, I don't think so.

Q. Did you have any conversation with her while the porter was making up the berth?

A. Yes. She was standing at the end of the aisle. She asked me for some water, so I got her a cup of water. She wanted to take some medicine. She took a large yellow capsule with the water I had given her and drank the water there.

Q. She took a capsule while you were matching?

A. While I was standing there, talking to her.

Q. Did she take anything more? A. No.

Q. She did not tell you what the capsule was?

A. No. I didn't inquire. It was none of my business.

Q. You were on the inside of the car, then?

A. Yes.

Q. What can you say about her appearance?

A. Well, I first had the impression that she had been drinking, but after I talked to her I knew that was not the case. She gave me that impression at first.

(Testimony of B. A. Paisley.)

Q. When you got close enough to her, were you able to smell any liquor?

A. No. That is why I say I knew she she had not been drinking.

Q. What was it that gave you that impression?

A. Just her actions, acting like a person who had been drinking.

Q. What was done as soon as the berth was made up?

A. The porter got a ladder and put her up.

Q. You were there when that was done?

A. Yes.

Q. Were you there when the porter was making the berth?

A. Standing at the end of the ladder. He was making the berth at that time.

Q. You heard Mrs. Teutschman's testimony that there were no curtains on the berth.

A. That would be impossible.

Q. Why would it be impossible?

A. Because the berth cannot be made up without hanging the [126] curtains up.

Q. In other words, her testimony that there were no curtains to stop her would not be physically possible? A. No.

Q. Do you base that on anything else? Did you see what the porter did do in regard to making the berth?

A. I just saw he was making the berth.

Q. Did you see whether he put the curtains on?

A. The curtains were already on one of the berths, because the lower berth was made.

(Testimony of B. A. Paisley.)

Q. Do you know whether he buttoned the flaps on the curtains? A. Yes.

Q. The protective flaps?

A. Yes, I know that.

Q. Did you see him do it?

A. I looked at the berth afterwards and I know they were buttoned.

Q. You were there at the time he helped the lady into the berth?

A. I was not. I was at the other end of the car, a 16-section car.

Q. Do you know whether the porter pulled the curtain when he put her in? A. Yes.

Q. Did you see him do it?

A. I went back there shortly after that and the curtains were [127] closed.

Q. Did you have occasion to notice the berth later on that evening?

A. Yes. I came through there—yes; every time I went through the car.

Q. What was the next thing you noticed?

A. At one time I came through there she had her foot sticking out of the berth.

Q. Sticking out through the curtain?

A. Yes.

Q. What did you do?

A. I just shoved it back in the berth. She didn't waken. I pulled the curtains together again.

Q. Were the curtains shoved apart when this happened? A. Just a little bit.

(Testimony of B. A. Paisley.)

Q. Just enough for a foot to come through?

A. Yes.

Q. Did you notice whether the flaps forming the curtains were buttoned? A. They were.

Q. You pulled the curtain back together?

A. I spoke to her but she did not respond. I pulled the curtain together and left.

Q. Did anything else happen which called your attention to that berth that evening? [128]

A. Well, the lady rang the bell—I was in the car; was in the smoking room. I answered the bell. She asked for some water. She said she wanted to take some medicine.

Q. Her testimony that the porter answered it is incorrect, then?

A. The porter had to guard two tourist cars. The porter was on guard in the other car. I was in the smoking room of this car, so I answered the bell rather than to wait for him to come in there.

Q. When you got down to Mrs. Teutschman's berth, what was the condition of the curtains then?

A. They were closed.

Q. What did you do?

A. I asked her if there was something she wanted and she said she wanted some water; she wanted to take some medicine, so I got her a cup of water and handed it up to her, but I didn't see—the curtains were closed.

Q. You recall her saying that she wanted to take some medicine? A. Yes.

(Testimony of B. A. Paisley.)

Q. Did you open the curtain when you got her water for her?

A. No, just handed the cup of water up.

Q. When you left the berth, were the curtains closed or open? A. They were closed.

Q. When was your attention next attracted to that berth?

A. After she claims to have fallen out of the berth. [129]

Q. How did you happen to find out about it?

A. I was back in the train, and a gentleman came back for me.

Q. Mr. Holland, news agent, came back and got you? A. Yes.

Q. When you came back to this car, where was Mrs. Teutschman? A. In the dressing room.

Q. The ladies' dressing room?

A. The ladies' dressing room.

Q. What can you say about her appearance then?

A. She was fully dressed and had her stockings on; was sitting in a chair in the dressing room; she was moaning a little bit. She said she had been hurt; she had hurt her right leg. Her dress was up about this far (indicating); her stockings down to her ankle almost; couldn't see any bruises on her leg anywhere.

Q. Did you try to talk to her?

A. Yes. She seemed to be in a stupor.

Q. You could not get anything out of her?

A. No.

(Testimony of B. A. Paisley.)

Q. Did you try to find out how she got hurt?

A. That is all I could find.

Q. What was done with her?

A. Well, we got the train conductor and tried to get a doctor at Redding.

Q. Where did you keep her? In what room?

A. In the dressing room. As soon as I could, I called the passenger agent and, as soon as he got out of the berth, I put her in the passenger agent's berth.

Q. And then she was there the rest of the time until you got to Redding? A. Yes.

Q. Did you see Mrs. Teutschman during that time until you got to Redding?

A. Yes. I was there practically all the time.

Q. What condition was she in during that time?

A. The minute she hit the berth, she was sound asleep.

Q. Did you help take her off the train at Redding? A. Yes.

Q. Have you seen any more of her since then until today? A. Not until today.

Q. Did you help get her baggage together and put it off at Redding? A. No.

Q. After you heard of this fall Mrs. Teutschman had taken, did you inspect Upper 14? A. Yes.

Q. What did you find?

A. As soon as we left Redding, I went in and looked at the berth. The curtains were all buttoned up and everything.

(Testimony of B. A. Paisley.)

Q. Were the curtains spread any? [131]

A. A short distance, yes.

Q. How far apart were they?

A. I would say twelve or fourteen inches.

Q. In the position you found the curtains, after you heard about the fall, would it have been possible for anyone to have fallen out of the berth?

A. No, I don't think they could. Understand the way these curtains are fastened. There is a rod goes across the berth. There is a division about this far (indicating) from the end of the rod and it is impossible to slip that curtain beyond that division. It cannot be fully opened.

Q. On Exhibit No. 8, can you point out what you mean?

A. Right here, at the end here (indicating), there is a division right in her and it is impossible to slip this clear back.

Q. How far can you spread these upper curtains? A. Oh, about this far (illustrating).

Q. About how far would that be?

A. I would say, oh, probably fourteen inches on each curtain.

The Court: There are buttons out here?

A. Inside buttons.

The Court: How many?

A. There are four or five or six buttons there, inside.

(Testimony of B. A. Paisley.)

Q. (By Mr. Strayer): Your testimony is it would have been impossible to spread these curtains, buttoned as they were, more than twenty-five inches, say? [132]

A. No. I have been sleeping in upper berths for twenty years and I always have a hard time getting in there.

Mr. Strayer: I think that is all.

Cross-Examination

By Mr. Ryan:

Q: Did you have any conversation with her outside the train?

A. No, only just about the ticket; explained to her the ticket was on the following train.

Q. Did she say anything about a lower berth?

A. Every time, when they show up with an upper berth—with a ticket for an upper berth—they want a lower.

Q. Did she make quite a fuss?

A. Not more than usual.

Q. You first inspected the berth after Mrs. Teutschman got off the car? A. Yes.

Q. At that time, it was in order as far as distances are concerned; about fourteen inches apart?

A. Just the way it should have been.

Q. This berth was not made up at the time she got on the train?

A. The lower was, but not the upper.

Q. The curtains were back on the upper?

A. Yes.

(Testimony of B. A. Paisley.)

Q. I understood Mr. Rainey to testify that you could pull the lower back this far (indicating) but the upper could go all the [133] way back?

A. This rod comes in here (illustrating). It is impossible to go any further.

Q. There is nothing on the rod to stop it?

A. No, not the upper.

Q. On the lower, there is? A. Yes.

Q. If these buttons were properly buttoned along the bottom here (indicating), would it be possible for her to fall out, if she was lying flat in bed? A. I don't see how it would be.

Mr. Ryan: That is all.

(Witness excused.)

J. G. HOLLAND

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. What is your full name?

A. Jesse G. Holland.

Q. Where do you live?

A. Live at Clovis, California.

Q. What is your occupation at the present time?

A. I was news agent on the train. At the present time?

Q. Yes.

A. I have a hatchery and feed store.

(Testimony of J. G. Holland.)

Q. In January, 1946, were you employed on the Southern Pacific train? A. Yes.

Q. By whom were you employed?

A. Southern Pacific.

Q. Were you working on the same car that Mrs. Teutschman was injured on?

A. I was working on the same train, No. 18.

Q. Did you have a berth on that same train?

A. Yes.

Q. Along later in the night of January 9, 1946, or the early morning of January 10, 1946, did you have occasion to get out [135] of your berth to go anywhere?

A. Yes, had to get up and go to the men's room at 4 o'clock.

Q. As you came back, did you go through Car 4199?

A. As I came out—the men's room is right down to the end where my berth was. My berth was No. 5. When I came out of the men's room, I happened to look down to the other end of the car and I see this lady lying on the floor.

Q. Lying in the aisle?

A. Lying in the aisle, yes.

Q. What position was she in, in the aisle?

A. She was kind of laying down on her stomach.

Q. What was she doing, if she was doing anything?

A. She was just laying there. I went up and asked—you want me to tell all?

(Testimony of J. G. Holland.)

Q. Yes.

A. I went up and asked her if she fell out of the berth and all she would do was just moan. I couldn't get nothing out of her. She just said, "Huh," or something like that. I ran for the porter, to tell the porter to come quick. I said, "Somebody—some lady fell out of her berth."

Q. Tell us where you found her? Was she lying below Upper 14? A. Right below, yes.

Q. When you found her there, did you notice the position that the curtains then were in, 14?

A. I sure did. [136]

Q. What position were they in?

A. They were opened something like that (illustrating), just room enough for a person to get their feet out and go feet first. That is the way she—

Q. Were they open far enough so that a person could have rolled out? A. No.

Q. Did you look at them to see whether or not the protective flaps were fastened?

A. I didn't look to see whether they were fastened or not, but I did look and seen how far they were apart.

Q. Did you help take Mrs. Teutschman into the ladies' room?

A. I watched the porter. He lifted her up and tried to take—she couldn't stand on her feet and he had to carry her and he wanted to know—he said, "What will I do with her?" I guess he was a little excited. I said, "Take her to the ladies' room and sit her on a chair," and he said he would go and

(Testimony of J. G. Holland.)

get the Pullman conductor. I said, "No, you won't. I will go. You are going to stay here with this woman," and I went for the Pullman conductor.

Q. Did you go back in after that? A. No.

Q. Did you see any more of Mrs. Teutschman after that?

A. No. I got the Pullman conductor and they helped her into the ladies' room. When I got the Pullman conductor, I went to [137] my berth. I had to work hard and I had to have my rest.

Q. Were you inside the ladies' room while she was? A. Yes.

Q. Did anyone, while you were there, try to talk with her?

A. The porter and I both tried to talk with her, but we couldn't.

Q. What was her appearance?

A. I thought she was intoxicated. To tell the truth, I thought that she was.

Q. You had not seen her earlier that day?

A. No. I was up in the chair cars.

Mr. Strayer: That is all.

Cross-Examination

By Mr. Ryan:

Q. Did you smell any liquor on her breath?

A. I can't smell a thing. I couldn't have told you if she had——

Q. The porter came out about the same time you were out there in the aisle?

A. How is that?

(Testimony of J. G. Holland.)

Q. The porter came out at the time you were out in the aisle, helping her?

A. I went for the porter. He was not in there. I went for him.

Q. He came out while she was still on the floor?

A. Yes.

Q. He testified he didn't see her until she was in the berth? A. This is a different porter.

Mr. Ryan: That is all.

Mr. Strayer: That is all.

(Witness excused.)

LAURINE K. SMITH

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Your name? A. Laurine K. Smith.

Q. You live in Los Angeles?

A. That is true?

Q. Married? A. Yes.

Q. Do you work? Are you employed?

A. Working part time.

Q. Whom do you work for?

A. Pacific Motor Truck.

Q. Were you formerly in the employ of the Southern Pacific Company? [139] A. Yes.

(Testimony of Laurine K. Smith.)

Q. Were you working for the Southern Pacific Company in January, 1946? A. Yes.

Q. In what capacity?

A. I was a passenger aid.

Q. Were you, by any chance, passenger aid on the train on which Mrs. Teutschman was riding when she had her accident? A. Yes, I was.

Q. Do you remember the lady?

A. Yes, I do.

Q. Where was your berth on that train?

A. There was one berth between me and 14. I was 16.

Q. You were in the same car? A. Yes.

Q. When did Mrs. Teutschman first come to your attention?

A. At between 1 and 2 in the morning. I felt my berth curtain shake and I think my shoulder, too, and the porter said a lady had fallen from the berth.

Q. You had already retired?

A. Yes, I was asleep.

Q. Did you get up, then, and put on your clothes? A. Put on a robe.

Q. Where was Mrs. Teutschman when you got up? [140] A. In the ladies' room.

Q. Who was with her?

A. One of the conductors, I think.

Q. Was Mr. Paisley there?

A. Yes, I saw Mr. Paisley.

(Testimony of Laurine K. Smith.)

Q. Will you tell us about how Mrs. Teutschman appeared? Will you tell us about Mrs. Teutschman's appearance when you first saw her?

A. My impression was that she was dressed, but there was some nightclothes over her dress; I believe.

Q. How was she dressed? Can you tell, Mrs. Smith?

A. Her stockings were hanging around her legs and she had on a dark skirt, a wool skirt, I believe. That is all I remember.

Q. Did she have any kind of a jacket or blouse on?

A. Yes, she did.

Q. What kind of a blouse was it?

A. It had red in it, I believe.

Q. What was her physical condition, as near as you can tell?

A. My impression was that she had been hurt but was very sleepy—a combination.

Q. Do you remember talking with her?

A. Yes, sir, I do.

Q. What conversation did you have?

A. It was impossible—she couldn't seem to understand me or answer. [141]

Q. Did you make any effort to find out where she was hurt or how badly she was hurt?

A. Yes, sir, I did.

Q. What success did you have with that?

A. My impression was she had either hurt her arm—it was either her arm or leg on the right side. I asked her—I asked about having her put into my berth where she could be stretched out.

(Testimony of Laurine K. Smith.)

Q. I think the testimony is she was taken off the train at Redding. Were you with her up until the time she was taken off the train?

A. Most of the time, but, after I had her in the berth, then I asked her to be watched until I dressed myself. I took my clothes from the hammock of the berth and went into the ladies' room and dressed.

Q. Did you stay with her most of the time—the rest of the time? A. Yes, sir, I did.

Q. Did you have any conversation with her?

A. I attempted to. We tried to get her name, but it was impossible.

Q. Did you get any information from her at all?

A. No, I didn't.

Q. What is the fact as to whether she was asleep or awake during that time?

A. When I touched her, she would moan a little, as if she was in pain; but when I would let her alone, she would drop into a deep sleep.

Q. Did that situation continue up to the time they took her off the train? A. It did.

Q. Did you get off the train with her at Redding? A. Yes.

Q. Did you take her to the hospital at Redding?

A. Yes, I believe I called the hospital.

Q. What did you do?

A. I lifted her into the landing and said we would have to have two nurses and then in a while later they came out and put her on a wheelchair and lifted it over the steps—up the steps—and put her in a room.

(Testimony of Laurine K. Smith.)

Q. Take her baggage with you? A. Yes.

Q. What did her baggage consist of?

A. She had a shopping bag and a violin case and her purse and hat.

Q. When you got to the hospital, did you and the nurse make an inventory of the contents of the luggage?

A. Yes, I believe that was done.

Q. What was in the violin case?

A. Odds and ends of clothing, underwear. [143]

Q. Was there a violin?

A. I am sorry. I don't remember seeing any violin.

Q. Find anything in the nature of medicine in anything there?

A. Yes, the nurse did, in my presence.

Q. What was it? What kind of medicine was it?

A. Well, I am not familiar with medicines, but it was a bottle of capsules—a bottle with capsules in it.

Q. Yellow capsules? A. Yes.

Q. Did the nurse make any inquiry of you as to whether she had been taking medicine?

A. Yes, they did.

Q. What did they inquire?

A. I don't remember their exact words, but it was to the effect: Did I give her something or had she taken something herself?

Q. Was she apparently still asleep at this time?

A. She dropped off at intervals, yes.

(Testimony of Laurine K. Smith.)

Q. What condition was her clothing?

A. Disheveled.

Q. Pardon?

A. It was wrinkled, I would say.

Q. Speaking about the time that she was in the hospital, after her clothing had been removed, do you know what condition it was in?

A. Soiled. [144]

Q. What condition was she in?

A. She was soiled, too.

Q. Did you notice a sore on her leg?

A. Yes.

Q. Whereabouts on the leg?

A. On her thigh, almost above the groin.

Q. What sort of a sore was it?

A. It was a very deep sore, not so long as deep, into her leg. It was quite a bad looking sore.

Q. Was it discharging at the time you saw it?

A. It was raw.

Q. It was not bleeding? A. No.

Q. Do you know what it was?

A. I didn't know. The nurse told me. I didn't know until the nurse told me.

Q. Did you make a further effort to find out what Mrs. Teutschman's name was?

A. Yes, and we succeeded.

Q. How did you get the name?

A. Well, I never did have anything but the last name. I think we were able to get that from her due to the fact that she had been visiting this sister in Los Angeles and was going to Portland.

(Testimony of Laurine K. Smith.)

Q. Did you give her name to the conductor?

A. Yes, I wired it to him.

Q. How did you do that, by telegraph?

A. Yes.

Q. Let me ask you: While you were still on the train, after you heard about this accident, did you have occasion to look to see if there were curtains on Upper 14?

A. Yes, sir, I did.

Q. Did you look particularly?

A. I looked within, I would say, six feet of the upper curtains.

Q. What is the fact? Were there curtains on the berth?

A. Yes, there were.

Q. How far apart were they pulled?

A. About twelve, oh, maybe fourteen inches.

Q. You don't know, I suppose, whether they were fastened at the bottom?

A. No.

Q. Have you ever had experience being around people who were or had been taking a drug such as nembutal?

A. Not except at time of operations or something like that.

Q. What could you say, from your observation of Mrs. Teutschman? Did she have the appearance of one who had taken drugs of that kind?

A. Yes, she definitely had.

Mr. Strayer: I think that is all. [146]

(Testimony of Laurine K. Smith.)

Cross-Examination

By Mr. Ryan:

Q. Are you acquainted with the effects of that kind of a drug?

A. I have taken sodium amytal myself, which has the same sedative effect.

Q. Just makes people sleep?

A. That is right, a dopey sort of sleep.

Q. She did not have her shoes on when you saw her?

A. No, I don't believe she did. I would hesitate to say. I am sorry.

Q. The porter says that he found the shoes. You don't recall having seen her shoes?

A. I don't recall.

Q. Her clothes were all wrinkled up, like she had slept in them?

A. Yes.

Q. Her stockings were not pulled up?

A. No, they were not.

Q. You were employed by the Southern Pacific at that time?

A. Yes, I was.

Q. They provide a woman like yourself on every train?

A. It is for the service of babies.

Q. Did you get back to take the same train?

A. No, I didn't.

Q. You stayed at Redding?

A. Yes, I did. [147]

Mr. Ryan: That is all.

(Witness excused.)

Mr. Strayer: The defendant rests.

Defendant rests.

Plaintiff's Rebuttal Testimony

MRS. MAGGIE MAE TEUTSCHMAN

the plaintiff herein, having been previously duly sworn, was recalled in her own behalf, in rebuttal, and was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. You had been traveling all day, had you not?

A. I had, since 8 o'clock in the morning.

Q. You had been sitting down all that time?

A. Yes.

Q. Had you done any drinking that day?

A. Never taken a drop of nothing in my life.

Q. You do not drink at all?

A. Never drank or smoked or used any kind of drugs, never in my life, never.

Q. How were you dressed? [148]

A. I was dressed exactly the same as I am right now.

Q. Did you have your clothes off at all that night?

A. I didn't take off my clothes—I took off my slippers and hat, that is all. I had a brown fur around my neck. I didn't even take that off.

Mr. Ryan: That is all.

Cross-Examination

By Mr. Strayer:

Q. You had the same suit on you now have on?

A. I did. Put it on at my sister's the morning when I left there to catch the train.

(Testimony of Mrs. Maggie Mae Teutschman.)

Q. What color is that suit?

A. It is black, if I can see straight.

Q. You did not have a red jacket on?

A. I did not.

Q. Nor a dark skirt?

A. I did not. I had on the same suit I have got on now, with a brown fur on it.

Q. Didn't you say in your deposition you had a brown suit on? A. No.

Q. I will call your attention to Page 20 of your deposition:

“Q. Did you wear a red dress this night?

“A. No, I didn't. I had on a brown suit.”

A. I didn't have on nothing red.

Q. Did you testify you had on a brown suit?

A. Not that I know of.

Q. Do you deny that you so testified in your deposition?

A. I had a brown suit with me and I had a whole lot of slippers with me. I had on a brown fur.

Q. Do you remember testifying you had on a brown suit? A. No.

Q. Did you or did you not so testify?

A. Not that I know of.

Mr. Strayer: I offer the deposition in evidence, your Honor, for the purpose of proving what the plaintiff's testimony was in that regard.

The Court: Admitted.

(Testimony of Mrs. Maggie Mae Teutschman.)

(Adverse party deposition of Maggie Mae Teutschman, plaintiff, thereupon received in evidence and marked Defendant's Exhibit No. 13.)

Mr. Strayer: That is all.

Redirect Examination

By Mr. Ryan:

Q. Did you make any statement to Dr. McVicker about the accident?

A. I never did talk to Dr. McVicker; never talked to him in my life. I never made any statement. He didn't ask me no questions.

Mr. Ryan: That is all.

(Witness excused.)

(Testimony closed.) [150]

Defendant's Motion for Dismissal

Mr. Strayer: For the purpose of the record I want to move that plaintiff's case be dismissed on the ground that under the facts and the law the plaintiff is not entitled to any relief.

The Court: Motion denied.

(Argument of counsel) [151½]

Reporter's Certificate

I, Ira G. Holcomb, a Court Reporter of the above-entitled Court, duly appointed and qualified, do hereby certify that on the 9th day of September, A.D. 1947, I reported in shorthand certain proceedings occurring upon the trial of the above-entitled cause; that I thereafter caused my said shorthand notes to be reduced to typewriting, and that the foregoing transcript, pages numbered 1 to 150, both inclusive, constitutes a full, true and accurate transcript of said proceedings, so taken by me in shorthand on said date as aforesaid, and of the whole thereof.

Dated this 3rd day of December, A.D. 1947.

IRA G. HOLCOMB,
Court Reporter.

DEFENDANT'S EXHIBIT NO. 11

In the District Court of the United States
for the District of Oregon

Civil No. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
Corporation, and THE PULLMAN COM-
PANY, an Illinois Corporation,

Defendants.

DEPOSITION OF DR. H. R. McVICKER

Taken in Redding, California,
Monday, August 4, 1947

Be It Remembered, That pursuant to stipulation on file herein and on Monday, the 4th day of August, 1947, commencing at the hour of eleven o'clock a.m. of said day, before me, Frank W. Shuman, a Notary Public in and for the County of Shasta, State of California, in the Superior Court Room of Shasta County at Redding, California, personally appeared Dr. H. R. McVicker, the witness named in said stipulation. who, being by me first duly sworn, was then and there examined and interrogated by Anthony Telay, Jr., counsel for plaintiff, and Richard Devers, counsel for defendants.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

It was stipulated that the Notary Public need not remain present during the taking of the said deposition, but that the same should have the same force and effect as if he were personally present at all times.

Deposition of

DR. H. R. McVICKER

a witness for defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Devers:

Q. Will you please state your full name?

A. Harry R. McVicker.

Q. And what is your business?

A. Physician and surgeon.

Q. Are you licensed to practice medicine in California?

A. Yes, sir, and in Shasta County.

Q. And where is your office?

A. 1726 Market Street, Redding.

Q. Do you recall treating a lady by the name of Maggie Mae Teutschman in Redding in January of 1946?

A. Yes sir.

Q. How did you happen to be called into the case?

A. Apparently because I am district physician and surgeon for the Southern Pacific Company.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. Where did you first see Mrs. Teutschman?

A. Memorial Hospital, Redding.

Q. And do you remember the day in January?

A. The tenth.

Q. And what hour was she admitted to the hospital?

A. About two-thirty, a.m.

Q. What time did you first see her?

A. Around nine o'clock in the morning.

Q. Will you describe her complaints and her condition?

A. She was complaining of pain in her right upper leg and thigh.

Q. Did she give you an explanation of the cause of her pain.

A. Yes.

Q. What did she say?

A. Said that she woke up and started to turn over in the Pullman berth and fell out of bed, or fell out of the berth, rather, and said that she caught the rail and let herself down easy.

Q. Did she say when that occurred?

A. The way I understood it—I don't think she told me exactly, but the way I understood it it was just as the train had stopped here in Redding.

Q. On the 10th of January, 1946?

A. Yes, about two o'clock in the morning.

Q. Did you observe any other condition?

A. Well, the nurses—may I state first what the nurses said?

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. Well, not as yet.

A. Well, that's all right. When I saw her that morning she seemed to be still very sleepy and she talked incoherently and didn't seem to know what was going on except she had some pain there and she slept most of the time until three o'clock that afternoon and that is the first time they gave her anything for a pain, three o'clock in the afternoon when she had an eighth grain of morphine.

Q. And you saw her approximately eight-thirty on the morning of the 10th?

A. Approximately nine o'clock.

Q. And she at that time was incoherent?

A. Yes, and very drowsy.

Q. And she slept from that time——

Mr. Telay: I think you are leading with that, Mr. Devers.

Mr. Devers: He has already testified but I will change the form of my question.

Q. I think this is repeating your answer, but I understood she slept from the time you first saw her, for how long?

A. She slept most of the time, from the time she entered the hospital until three o'clock that afternoon.

Q. What in your opinion was the cause of her drowsiness and numbed condition that you described?

A. The taking of sleeping capsules, or capsules which she admitted taking, a nembutal capsule; she

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

had a bottle containing several grain and a half nembutal capsules with her.

Q. Did you see the bottle? A. Yes, I did.

Q. And there were how many capsules in it?

A. I don't remember; I don't believe I counted them. I think there was about a dozen.

Q. You stated that the capsules which were a grain and a half nembutal—

Mr. Telay: I don't believe he stated a grain and a half.

A. Yes, they were.

Q. (By Mr. Devers): Are there different degrees of strength of nembutal?

A. Yes, a grain and a half, three-quarters of a grain and three-eighths of a grain.

Q. Well then I take it that the grain and a half is the strongest of the capsules normally used; is that correct? A. That's right.

Q. What is nembutal?

A. It is a sleeping powder.

Q. Is it a drug? A. Yes.

Q. Does the drug normally have a different effect upon different people depending upon their condition or their possible use of the drug, past use of the drug? A. Yes.

Q. If a person, normal in all respects, were to take two capsules within a period of two or two and a half hours, of the grain and a half nembutal, that would be the normal effects?

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

A. Well, it would be that they are more or less under a hypnotic effect and be very hard to awake; they would sleep.

Q. How long a period of time would it take for the effect of two capsules to wear off so that a person would be normal in his senses?

A. Six to eight hours. The manufacturer claims six hours.

Q. From the condition of Mrs. Teutschman as you observed it, would you say that when you first saw her at eight-thirty her mental faculties were numbed?

A. Yes sir.

Q. In your opinion was her sleep, or sleeping from the time you first saw her to the time I think three or three-thirty in the afternoon when she awakened, induced by the sleeping drugs?

A. I think it was.

Q. How did you treat Mrs. Teutschman? What did you do for her?

A. I placed her right leg in a basket, metal splint.

Q. Did you take x-rays?

A. Yes sir, I had the hospital take them.

Q. The hospital took them?

A. Yes.

Q. At your request?

A. Yes.

Q. Did you examine the x-rays?

A. I did.

Q. And the x-rays, are they now available?

A. No sir.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. Do you have any idea what has happened to them?

A. My idea is that probably Doctor Madoff, an osteopathic physician and surgeon who was here at that time, and Miss Teutschman suggested that since I was district surgeon for the Southern Pacific that she call a physician of her own choosing and that was agreeable with me, and so I turned her—turned her over to Doctor Madoff and probably he has the x-rays.

Q. But you don't know.

A. I don't know, and Doctor Madoff has on his office a sign on the entrance "Closed temporarily"—he has been gone about three months. I don't know where he is.

Q. The hospital has been unable to find them?

A. They are not at the hospital.

Q. And I take it you made a search of your office records and they are not there?

A. Yes sir.

Q. Can you state what the x-rays did show?

A. Showed a spiral fracture of the right femur, also an osteomyelitis of the left femur with extra bony decalcification and decomposition.

Q. Did you discuss the osteomyelitis with the patient, Mrs. Teutschman, concerning the history of it? A. Yes.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. Did she give you any statement as to that condition?

A. I don't recall very clearly but she had been treated for it before, she told me, but I don't recall where she had been treated.

Q. Was there any evidence of the osteomyelitic condition on the surface of the body?

A. Yes, there were two draining fistulas, one near the fold of the buttocks and one on the anterior surface, as I recall it.

Q. From your examination of the x-rays and the draining fistulas, could you state in your opinion how long the condition of osteomyelitis has been in existence?

A. I would in my opinion—it would have been several years; I couldn't say how long.

Q. Did she make any statement to you about the duration of that condition?

A. If she did I don't recall her answer.

Q. What is osteomyelitis?

A. It is an infection of the bone.

Q. What effect does it have upon the bone?

A. It destroys it and weakens it.

Q. Would you say that condition of osteomyelitis had any relation or had any effect on the break that you observed in the x-rays?

A. It would make the bone much weaker and much more easily broken than a normal bone.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. So that the leg wouldn't withstand the normal jar that a bone without that osteomyelitic condition could stand; is that correct?

A. Yes sir.

Q. If the osteomyelitis had been in existence for a period of say twelve years, in your opinion would a slight fall break the leg, or a slight jar?

A. Yes sir.

Q. You stated that Mrs. Teutschman had a bottle containing several capsules of one and a half grain nembutal. Do you know what happened to that bottle?

A. So far as I know it was returned to her when she left for home; she had taken it with her, as far as I know. That is what is usually done with any medicine a patient brings with them to the hospital.

Q. As I recall, Doctor, I asked you how you treated Mrs. Teutschman; I believe you stated that you put splints on the leg.

A. A splint.

Q. Did you give her any other treatment?

A. Diathermy and injections of morphine, one-eighth grain as necessary for pain.

Q. You also stated that you were dismissed by Mrs. Teutschman and that she employed her own doctor. Do you remember the date on which you were dismissed?

A. The twelfth.

Q. When did the patient leave the hospital, do you know?

A. The thirteenth of January.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. I think you also stated, Doctor, that Mrs. Teutschman told you that she had taken one nembutal tablet. Do you recall when your conversation was with her, whether that conversation took place when you first saw her at eight-thirty on the morning of the tenth or whether it took place after she awakened?

A. It took place in the afternoon.

Q. Did you have any conversation with her when you first saw her?

A. Yes, I asked her questions but she didn't seem to be able to answer except that she had fallen.

Q. Her incoherent condition as to which you testified when you first saw her at eight-thirty o'clock, could that be any possible chance be the result of simply a broken leg?

A. I don't believe so; I don't see how it could be.

Mr. Devers: I believe that is all for direct.

Cross-Examination

By Mr. Telay:

Q. Doctor, I believe you testified on direct examination that you first saw Mrs. Teutschman at nine o'clock the morning of January eleventh.

A. No, the tenth, at approximately nine o'clock.

Q. And then she had been brought in to the hospital that morning?

A. About two-thirty.

Q. You did not see her when she was brought in to the hospital?

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

A. That's right. The nurses called me on the phone and described her condition and said that she was resting and I told them to call me if they needed anything and she was sleeping so they didn't call me until I went there around nine o'clock.

Q. Did your reports transmitted to you from the hospital concerning your patient's condition indicate that she was in any pain?

A. Didn't seem that she was in so much pain, as when she was first brought in, she was noisy and incoherent in her speech, according to the nurses.

Q. Would you be able to know whether or not Mrs. Teutschman had been administered at the hospital any drug or sedative, any pain killer?

A. I know that she was not until about three o'clock in the afternoon of the tenth.

Q. Would it be beyond the realm of possibility that she received any drug in the hospital without your knowledge?

A. It should be. As you probably know they are supposed to write everything on the chart, any medication that was given, and there was nothing reported until about three o'clock in the afternoon of the tenth.

Q. Then you called upon her at the hospital at nine o'clock the morning of January tenth. You stated that her condition at that time was numb, she appeared to be in a numbed condition.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

A. No, I stated that she seemed to be under the influence of a sedative; she was not able to talk coherently and answer questions. I didn't say that she was numbed.

Q. I am sorry, I thought you made that statement. Did you question her at any length at that time?

A. No sir. I asked her a few questions and she seemed so drowsy I thought the best thing to do was to let her sleep and went back that afternoon.

Q. You formed the opinion at that time that she was under the influence of some sedative?

A. Yes, I did.

Q. Let me ask you, Doctor, would it be possible for a person the age of sixty-two such as Mrs. Teutschman here, to give that appearance by reason of shock and physical exhaustion without having taken any drug?

A. I don't believe so, even though she did have a fracture of the femur. She said that she started to fall, grabbed the rod and let herself down very easy.

Q. When did she tell you that, Doctor?

A. She told me that on the afternoon of the tenth.

Q. She told you she grabbed the rod and let herself down very easily?

A. Yes. I wouldn't say "very easily"; I think that is the word she used, she said "easily."

Q. You are quite sure she grabbed the rod and let herself down?

A. Yes sir.

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

Q. Now getting back to this question of her condition, am I to understand that you would attribute her condition to nothing other than being under the influence of a drug?

A. You mean her mental condition?

Q. Yes. A. I do.

Q. Did you make any further examination of her that would give you further evidence to base that opinion on?

A. Yes, between my examination and the nurses' reports, her sleeping most of the time until three o'clock that afternoon; she complained of very little pain until around three o'clock in the afternoon.

Q. Did she give you the impression that she was—aside from this appearance which in your opinion you attribute to the drugged condition—did she give any appearance of being exhausted or suffering from exhaustion or shock?

A. Well, I don't believe she was suffering from any shock; she was rather exhausted.

Q. You stated, Doctor, that she told you or admitted to you that she had taken a nembutal tablet.

A. That's what she told me.

Q. Are you sure she told you she had taken a nembutal tablet or taken a tablet?

A. No, it's a capsule. She said she took the nembutal capsule.

Q. And you saw these capsules?

A. I saw the ones that she had with her, yes.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. What was the color of those capsules?

A. Yellow.

Q. And you stated they were in a bottle?

A. Yes.

Q. You are quite sure they were not in an envelope?

A. Yes sir; they were in a bottle.

Q. At one time in your testimony on direct examination you stated, Doctor, that you prescribed I believe the administration of morphine at three o'clock in the afternoon, and subsequently you used the term morphine injection. Now did she have one or more morphine injections?

A. She had more than one; I don't recall how many but she was supposed to have it around every four hours as necessary for the relief of pain after three o'clock in the afternoon.

Q. Do you recall when the first administration of morphine was made?

A. It was about three o'clock in the afternoon of the tenth.

Q. And that was about the same time that you visited her that afternoon?

A. I think I saw her about that time; I saw her several times during the afternoon and evening of the tenth.

Q. And was it at this time that she made the statements to you regarding the manner in which she fell?

A. I think that it was.

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

Q. You prescribed or directed that x-rays be taken of Miss Teutschman; they were taken by the technicians at the hospital?

A. The technicians or the nurses; I don't recall who it was.

Q. They were taken pursuant to your order?

A. That's right.

Q. I will ask you, is it customary for these x-rays to be turned over to even another surgeon without an order from the doctor originally prescribing the x-rays?

A. It is not. I gave a verbal order that he could have the x-rays because I had been dismissed and I didn't see why not.

Q. You had given an order?

A. A verbal order. I didn't put it in writing.

Q. To this doctor—— A. Madoff.

Q. He is an osteopathic surgeon? A. Yes.

Q. To your knowledge do the records of the hospital show whether or not Doctor Madoff called for them or signed for them. or is there any such record kept?

A. There is no such record kept, no.

Q. Now Doctor, in regard to the effect of this osteomyelitis in weakening the bone so as to, as you state, to be in a condition where they fracture more easily, assuming that such a condition does exist and it thereby becomes somewhat less difficult to break a bone of the leg, would there be any lessening in the pain or affect of that injury? What I

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

am getting at is simply this, is the condition of osteomyelitis—does it act in any way upon the effect of an injury from the standpoint of pain? I mean simply, if I had osteomyelitis in this arm and I broke this arm, would I feel as much pain in that injury as if I were not suffering from the disease?

A. I doubt that you would, because you would be having pain steadily along before and be some increase in it, but I don't believe it would be as much as if you had no disease in your arm previous to the fracture. That's my idea of it.

Q. You mean being experienced to pain, your resistance to pain would be somewhat higher?

A. I believe so.

Q. But as a practical matter, leaving aside this pain register, would you say that the suffering would be equivalent in both types of injury, one who broke a leg who did not suffer from osteomyelitis and one who broke a leg suffering from osteomyelitis?

A. The pain would be very similar although it might be slightly less where they had osteomyelitis.

Q. You state that Mrs. Teutschman told you that she had taken a nembutal tablet?

A. Capsule.

Q. Did she indicate at what time she had taken this capsule?

A. She said "last night;" she didn't tell me the time.

Q. And she indicated to you that she had only taken one? A. Yes sir.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. She was brought into the hospital at two-thirty in the morning. Would you say then, Doctor, that if as you state she had taken a nembutal capsule some time prior to her admission to the hospital, would you say that it is customary for a single tablet of a grain and a half, as I think you testified, to leave such a lasting effect?

A. It is not usual.

Q. It is not usual? A. No sir.

Q. You stated that the x-rays of Mrs. Teutschman's leg indicated a spiral fracture of the right femur. Could you recall, Doctor, where the areas of osteomyelitis, bone infection, were in relation to the spiral fracture?

A. As near as I can recall the osteomyelitic area was in the upper third of the femur and also of the pelvis, and as near as I can recall the fracture was about the juncture of the upper and middle thirds of the femur, and I may be wrong because I can picture it but I have no X-ray and that's been a year and a half, nothing to refresh my memory.

Q. Well, perhaps you can help us out in a little lay language. Was any area of bone infection adjacent or coadjacent with the fracture?

A. I don't believe that it was coadjacent; it was adjacent in that it was very near to it, as I recall it.

Mr. Telay: I think that is all, Doctor.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Redirect Examination

By Mr. Devers:

Q. With respect to the osteomyelitis, would the condition from which or with which Mrs. Teutschman was suffering, would that condition in your opinion be in and of itself painful? A. Yes.

Q. Do you think that the infection of the bone and the draining fistulas which you have described would impair her walking ability? A. Yes.

Q. In your opinion would the condition of osteomyelitis have a tendency to make a fracture or a break a more serious injury than it might be without the condition of osteomyelitis?

A. I think it would.

Q. Would the condition of osteomyelitis in your opinion make it more difficult to heal a fracture of the bone in the area or near the area affected by osteomyelitis? A. Yes.

Q. I believe you have given an answer to a question similar to this, but I will ask it again: With respect to her statement that she had taken one nembutal capsule last night, a grain and a half, from her condition as you observed it at the time you saw her at nine o'clock in the morning of the tenth, and throughout that day and to three o'clock that afternoon, and from your knowledge of the effect of nembutal, would you say it was probable that she had taken or received more than one grain and a half capsule?

Defendant's Exhibit No. 11—(Continued)

(Deposition of Dr. H. R. McVicker.)

A. That's my private opinion, that she had taken two or more capsules, maybe several; I wouldn't say how many but it's my private opinion she had.

Q. Within what period of time?

A. Within a period of a few hours, three or four hours.

Q. I believe on direct examination, Doctor, after you had described Mrs. Teutschman's incoherent condition I asked you whether that condition as you observed it, or whether in that condition as you observed her, her mental faculties would be numbed. I think that's what counsel had in mind when he asked you the question on cross-examination.

Mr. Telay: That may have been.

Q. (By Mr. Devers): And your answer to that question would be what? A. Yes.

Mr. Devers: That's all.

Recross-Examination

By Mr. Telay:

Q. I would like to ask you, Doctor, if it is not normal and somewhat anticipated in medical practice that a person suffering from a back fracture is in a state of shock for a number of hours after such an injury?

A. Not as a general thing. In some cases it is, but we are just talking about general things now, I believe.

Q. Yes. A. No, I think it is not.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

Q. Have you discussed this case previously with representatives of the Pullman Company?

A. Yes sir, representative Singer.

Q. How many times before this appearance today?

A. I believe it was once personally and once on the phone. Do you want me to go ahead and describe——

Q. Yes.

A. Mr. Stacey, the representative, was up here and I talked to him personally; then he called on the phone regarding this interview which we are going through now.

Mr. Telay: I think that's all.

Redirect Examination

By Mr. Devers:

Q. Doctor, do you waive the reading and signing of this deposition?

A. I do.

Mr. Devers: And, Mr. Telay, do I understand you agree to waive the reading and signing?

Mr. Telay: Yes, that is correct.

Defendant's Exhibit No. 11—(Continued)
(Deposition of Dr. H. R. McVicker.)

State of California,
County of Shasta—ss.

I, Frank W. Shuman, Notary Public in and for the County of Shasta, State of California, duly commissioned and sworn, do hereby certify that the witness in the within deposition named, Doctor H. R. McVicker, was by me prior to the giving of this deposition first duly sworn; that the deposition was taken at the time and place first herein set out and was taken down in shorthand by Harvey D. Prather pursuant to stipulation on file herein; that the signature of the witness was waived both by the witness and counsel for plaintiff, and I return the same herein as transcribed by the reporter.

Dated: Redding, California, August 14, 1947.

FRANK W. SHUMAN,
Notary Public, in and for the County of Shasta,
State of California.

[Endorsed]: Filed September 2, 1947.

DEFENDANT'S EXHIBIT No. 12

In the District Court of the United States
for the District of Oregon

Civil No. 3460

MAGGIE MAE TEUTSCHMAN,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Kentucky
Corporation, and THE PULLMAN COM-
PANY, an Illinois Corporation,
Defendants.

DEPOSITION OF ARCHIE V. FRASER

Taken on behalf of the defendants, August 6, 1947,
at Room 1004 Pacific-Southwest Building, 215
West 6th Street, Los Angeles, California, pur-
suant to oral stipulation.

Appearances:

For the Plaintiff: Anthony Pelay, Esq., 833
American Bank Building, Portland 5, Oregon.

For the Defendants: Hart, Spencer, McCulloch
and Rockwood, by Richard Devers, Esq., Portland,
Oregon.

Mr. Devers: If there is no objection, I would
like to dictate a stipulation for the record.

Mr. Pelay: Yes.

Mr. Devers: Supplementing the stipulation
which has been filed of record herein, it is now
stipulated that the deposition of the witness Archie

Defendant's Exhibit No. 12—(Continued)

(Deposition of Archie V. Fraser.)

V. Fraser may be taken before Clifton Clay, Notary Public, at this time in Los Angeles, California, pursuant to the Federal Rules of Civil Procedure.

Mr. Pelay: So stipulated.

ARCHIE V. FRASER

produced as a witness on behalf of the defendants, pursuant to the above oral stipulation, and having been by Clifton Clay, the Notary Public in said stipulation named, before testifying, duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the above entitled and numbered cause now pending in said Court, testified as follows:

Direct Examination

By Mr. Devers:

Q. Mr. Fraser, do you waive the reading and the signing of your deposition? By that I mean is it agreeable to you for the deposition to be transcribed and filed in court without your having read and signed it? A. Yes.

Mr. Devers: Off the record, please, Mr. Reporter.

(Discussion off the record.)

Do you, Mr. Pelay, stipulate that the reading and the signing of the deposition by the witness may be waived?

Mr. Pelay: I am agreeable to that stipulation.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. (By Mr. Devers): What is your business, Mr. Fraser?

A. Distributing and selling—distributing and selling liquefied petroleum gas equipment and the selling and distributing of petroleum products nationally and for export.

Q. Where do you reside?

A. Bass Lake, California.

Q. How long have you resided in that vicinity?

A. In that vicinity for the last three years.

Q. Mr. Fraser, Southern Pacific passenger train No. 18 left Martinez en route to Portland, Oregon, on January 9, 1946, at, I believe, approximately 10 o'clock. Do you recall whether you were a passenger on that train?

A. Yes, I believe I was a passenger on the train. I have the records of the tickets included in my expense account in my office; but, as I recall, that is the train.

Q. Did you occupy a Pullman berth?

A. Yes, as I recall Lower No. 14.

Q. Do you remember the car number?

A. No. It would probably be reflected on the tickets.

Q. Did you observe the occupant of Upper 14 on your car, the occupant of that berth, from Martinez north? A. Yes.

Q. Was that occupant a man or a woman?

A. A woman.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. What is your recollection of the approximate time the train left Martinez?

A. Approximately 10 o'clock.

Q. Did you see the occupant of Upper 14 board the train? A. No.

Q. Did you see her on the car before she arrived— A. (Interrupting): Yes.

Q. Where were you at the time you saw her?

A. In the passageway near the men's rest room.

Q. Where was she?

A. Leaning against the wall at the end of the train, as I recall it, near the men's dressing room.

Q. About how far apart were you?

A. Well, we were close enough to touch on two or three occasions.

Q. Was any one with her?

A. No, she was alone.

Q. Will you describe her appearance, her clothing, and her physical bearing?

A. She was leaning on a violin case, apparently for support or—I believe for support because she wasn't where a rail could be held very readily; and her appearance was not what you would call neat. It might have been a little unkempt. I particularly noticed her because of the fact that I believe it was her right leg had a stocking rather disheveled and hanging low, and for a moment or two I thought she might have had an artificial limb. And the rest of her clothes indicated that, being a little disheveled, she either had been traveling a long time or

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

was a little careless about her hair. She just wasn't too neat in her appearance, but that was probably the result of noticing the stocking hanging.

Q. Did you observe her conduct while you observed her?

A. She was standing quite still, I would say, with the movement of the train—it was shortly after we had left the station. She seemed to be alone; didn't endeavor to move or walk very much; endeavored perhaps to stay out of the way of the passengers walking back and forth and looking perhaps a little bit lost. I mean I was wondering whether she might possibly be feeling a little intoxicated. She was looking as though she could use some help.

Q. When you say she appeared as though she needed help, what do you mean? Can you be more specific? Did she appear to be ill or injured?

A. Well, not necessarily; but she did indicate to me; and this is purely my opinion from the looks of her face, her eyes, and so forth, that she possibly might have been drinking. And I did make it a point to observe her on my return trip down to the end of the car to the rest room for a drink of water; and at that time I thought in my mind that she had not been drinking. In other words, I have just never seen any one that looked exactly that way that had been drinking. I discounted it. She might have taken something else, or it might have been a characteristic of her; but her eyes did seem unduly stary or glassy.

Defendant's Exhibit No. 12—(Continued)

(Deposition of Archie V. Fraser.)

Q. Did you smell any liquor on her body or——

A. (Interrupting): Not at all.

Q. Was any one else within close proximity to the two of you?

A. Well, there were several walking back and forth from time to time, waiting for the berths to be made up, several of the people.

Q. How long a period of time would you say you observed her at that end of the car?

A. Three or four times during a period of probably half an hour.

Q. Why were you at that end of the car as the train pulled out of Martinez?

A. Waiting for my berth to be made up and conveniently getting out of the way with a smoke in the rest room.

Q. Did this woman who occupied Upper 14—did you notice her stagger?

A. No, but she didn't seem to be able to walk easily. By that I mean it might not have been a stagger, it might possibly have been a bit of a limp or it might have been a stagger. I didn't think it was a stagger. I did think, because of the appearance of her stocking, that at first she might have had an artificial leg. After a while she moved along all right. I had only seen her take two or three steps, you might say, about the time I was ready to retire. And she was definitely taking care of the violin case by leaning on it for support.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. Do you know whether she had any other luggage with her that you saw?

A. That was all I saw, and that was unfortunately one of the reasons she was odd. There was no hat, as I recall. I won't say for sure she was not wearing a hat; but if she was, it certainly didn't look dressed up the way a person usually tries to look on a trip.

Q. You say you were waiting for the porter to make up your berth. Do you know whether the porter was also at that time making up Upper 14.

A. I believe he was, because they were both made up. When mine was made up, they were both completed.

Q. Now prior to the arrival of the train at Martinez, do you know whether any one occupied Upper 14? A. I don't know.

Q. Was the seat transformed into a berth before the train got into Martinez?

A. Yes, but it wasn't completed. It was well along towards completion.

Q. But it had not been made up completely?

A. That is right. At least mine had not. I had slipped my bag under; and the pillowcase, as I recall, was not on. There were two or three things to be done.

Q. Did you see any one in Upper 14 either before the arrival of the train at Martinez or immediately after its arrival and prior to the occupancy of Upper 14 by this woman? A. No.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. Do you know whether you retired before the occupant of upper No. 14?

A. Yes. I retired——

Q. (Interrupting): You retired first?

A. I retired first.

Q. At the time you retired, were there curtains——

A. (Interrupting): I am quite sure I retired first. It has been quite a while now; but I recall that I retired first and then the porter assisted her in with a ladder afterwards. And she endeavored to crawl in by herself, and I know the porter definitely stopped her and brought a ladder. And it was my impression that she had not been accustomed to getting in an upper berth. She wasn't familiar with it at all. And I think I was in my lower berth then. It was quite a little while ago; but I am virtually positive I was retired, because I hadn't been standing in the alleyway watching it.

Q. When you say she attempted to enter the berth herself, by that you mean she attempted to without the use of a ladder?

A. Yes, and I heard the porter asking her not to and to wait, that she couldn't possibly get in that way. And he brought a ladder and hooked it on.

Q. Did she use the ladder?

A. Yes, and the porter stayed there until she was in. I was in the lower berth all right, because I distinctly recall her having got in overhead and there was very little sound after she was in. In

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

other words, she apparently went to sleep very quickly or certainly did not fuss around much. I am not even sure she took time to undress.

Q. At the time you retired, were there curtains across the berth, your Lower 14?

A. Oh, yes.

Q. Was there also a curtain across Upper 14?

A. I believe there was.

Q. Do you know whether there was?

A. I would say there was definitely—to the best of my recollection there was.

Q. Was there a curtain from the top of Upper 14 to the bottom of it, regardless of whether it was closed? Was there a curtain on the berth?

A. Yes.

Q. Do you recall whether the porter, after the woman occupied Upper 14, closed the curtains?

A. No, I don't recall because I couldn't see. I was definitely in my berth. But I could hear them hook the ladder on and the conversation of helping her and the joustling against my curtains. When he took the ladder away, she was definitely in. I do not recall whether I heard him sliding any curtains or anything after that.

Q. Did you hear any conversation between this woman and the porter concerning the berth, whether it was her berth or not or any argument between the two?

A. I think the porter asked her if it was her berth, and outside of that I don't recall the conversation.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. Did you hear her object to entering Upper 14? A. No.

Q. Were you awakened for any reason during the night? A. Yes.

Q. What caused you to awaken, do you know?

A. Yes, it was apparently the sound of her having fallen out of the berth. I say that because she did—she apparently—she was on the floor, apparently outside my berth at the time, and there was a small outcry, not very large, but enough to awaken me; and some one farther down the train called either the porter or the conductor or the passenger agent, and they came to assist her at that time.

Q. Were your curtains closed—

A. (Interrupting) Yes.

Q. (Continuing) —at that time?

A. Yes.

Q. Did you look out into the aisle?

A. No.

Q. How do you know that it was the occupant of Upper 14?

A. After some assistance arrived, I looked out and saw that it was her.

Q. When you looked out then, did you notice the condition of the curtains? A. No.

Q. At any time during the trip did you notice this woman taking a drink of water? A. No.

Q. I hand you Defendants' Pretrial Exhibit No. 5 and ask you to examine it. In fact, here are De-

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Defendants' exhibits, pretrial exhibits, Nos. 6, 7, and 8. These purport to be pictures of a Pullman car with berths and curtains comparable to the car in which you were riding. Please look at Exhibit No. 8. Now do you recall whether you noticed the top of your curtain and the bottom of the Upper 14 curtain were fastened in the manner shown in Defendants' Pretrial Exhibit No. 8?

A. I do not know about the upper curtain, but I know that mine was fastened—whether in exactly this manner or not, I am not positive. But in my mind it was definitely fastened.

Q. Do you know whether the upper portion of the curtain and the lower portion of the curtain constitutes one complete curtain designed so that occupants of both the upper and the lower berth may enter independently of one another?

A. Yes, they may do that.

Q. At the time you retired, do you recall the condition of the curtains on Upper 14, whether they were closed or partially closed?

A. It would be my opinion that they were closed, because——

Q. (Interrupting) But you do not know?

A. I do not know positively. If they were opened, it would probably be more easily recalled.

Mr. Devers: I think that is all.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Cross-Examination

By Mr. Pelay:

Q. Mr. Fraser, did I understand you correctly when I understood you to say that the occupant of Upper 14 boarded the train shortly before Martinez?

A. No, I don't know when she boarded the train. I saw her shortly after we left Martinez.

Q. And you had Lower 14? A. Yes.

Q. In so far as her appearance was concerned, would you say that other than her general appearance of—you mentioned that she appeared disheveled. Was there anything that led you to believe that she was under any unusual circumstances?

A. Well, as I mentioned earlier, my first thought was that she probably had an artificial limb, which I believe was the right leg, because of the way the stocking was hanging. The leg seemed stiff. Afterwards, as she walked, I was quite sure that wasn't the case. But I did think there was something a little difficult in her movements.

Q. From your observation could you attribute that impression to perhaps the existence of some physical disability? A. That, yes.

Q. What would you estimate her age to be?

A. Oh, perhaps 45.

Q. Did she give you the appearance of being tired, perhaps from traveling?

A. From something. She was undoubtedly tired and weary.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. You said on direct examination that your first impression was that she might have been under the influence of liquor. Then you stated—I believe I am correct—that you revised that opinion?

A. Yes.

Q. You felt that she was acting normally but somewhat——

A. (Interrupting) Normally, but there was obviously some irregularity in the appearance of her face, it would seem to me, something enough to draw my attention, sufficiently outstanding.

Q. From that you had not been able to form any opinion, from your observation?

A. No.

Q. Now you were in Lower 14 at the time the Pullman porter assisted the occupant of Upper 14 into her berth; is that correct? A. Yes.

Q. Were your curtains drawn at that time?

A. They were drawn. I hadn't buttoned them tightly, but they were drawn.

Q. Now from your observation of her conduct would you say that she appeared to be familiar with the Pullman berths or not?

A. I believe she was not, certainly not with upper berths.

Q. Did that seem pretty obvious to you?

A. Yes.

Defendant's Exhibit No. 12—(Continued)

(Deposition of Archie V. Fraser.)

Q. Now you could not state definitely whether or not—I am sorry, I am leading you perhaps—could you state definitely or not as to the condition of the curtains while she was occupying that berth? Were they open or were they closed?

A. While she was occupying the berth?

Q. Yes.

A. I couldn't say, because I couldn't see them after she got in.

Mr. Pelay: That is all.

Redirect Examination

By Mr. Devers:

Q. You testified on cross-examination that because of the manner in which she entered the upper berth it appeared to you that she was not familiar with berths on trains, at least upper berths?

A. Yes.

Q. What was the primary basis for that conclusion, that she wanted to enter without the use of a ladder?

A. Yes, that she had definitely endeavored to enter without the use of a ladder.

Q. But the porter insisted that she use a ladder?

A. Yes.

Q. So she got into the berth, so far as you know, safely?

A. Yes.

Q. You testified on cross-examination that you might attribute your impression of her to a physical disability. I take it you are limiting that impression to her apparent limp?

A. That is right.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

Q. That does not apply to your impression that because of a stary eye and the other condition there was something else——

A. (Interrupting) No.

Q. (Continuing) ——probably wrong?

A. No, something else.

Q. But the impression you might attribute to a physical disability I take it you got from the limp?

A. The limp—I wouldn't say the limp: the apparent limp or difficulty with the leg. My reason for that is the fact that I have a limp in my own leg and I may be a little more conscious of noticing it in others.

Q. How old are you, Mr. Fraser?

A. I am 38.

Q. You testified that she appeared to be about 45. Do you think that she was at that age?

A. She might be anywhere between 35 and 50. I just——

Q. (Interrupting): Between 35 and 50?

A. Anywhere there. I am not accurate on diagnosing the age——

Q. (Interrupting) Do you know her name?

A. No.

Mr. Devers: That is all.

Mr. Pelay: That is all.

Defendant's Exhibit No. 12—(Continued)
(Deposition of Archie V. Fraser.)

State of California,
County of Los Angeles—ss.

I, Clifton Clay, a Notary Public within and for the County of Los Angeles and State of California, do hereby certify:

That prior to being examined the witness named in the foregoing deposition was by me sworn to testify the truth, the whole truth, and nothing but the truth;

That the said deposition was taken down by me in shorthand at the time and place therein named, and was thereafter reduced to typewriting under my direction.

I further certify that I am not interested in the event of the action.

Witness my hand and seal this 22d day of August, 1947.

CLIFTON CLAY,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: No. 11840. United States Circuit Court of Appeals for the Ninth Circuit. The Pullman Company, a corporation, Appellant, vs. Maggie Mae Teutschman, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed January 26, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11840

MAGGIE MAE TEUTSCHMAN,

vs. Appellee,

SOUTHERN PACIFIC COMPANY, a Kentucky
corporation,

Defendant,

and

THE PULLMAN COMPANY, an Illinois corpora-
tion,

Appellant.

MOTION

Comes now The Pullman Company, appellant above named, and moves the court for an order dispensing with the necessity for reproducing in the printed record on appeal herein, plaintiff's Exhibits 1, 2, 3, 4, 5 and defendants' Exhibits 51½, 6, 7, 8, 9, 10 and 13, and providing that such exhibits will be considered in their original form without reproduction. This motion is based upon the affidavit of M. B. Strayer and the stipulation of appellant and appellee hereto attached.

Dated at Portland, Oregon, this 29th day of January, 1948.

M. B. STRAYER,

HART, SPENCER,

McCULLOCH & ROCKWOOD,

Attorneys for Appellant.

So ordered:

FRANCIS A. GARRECHT,

Senior United States

Circuit Judge.

State of Oregon,
County of Multnomah—ss.

Due service of the within motion is hereby accepted at Portland, Oregon, this 29th day of January, 1948, by receiving a copy thereof, duly certified to as such by M. B. Strayer of attorneys for appellant.

/s/ T. H. RYAN,
Of Attorneys for Appellee.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT

State of Oregon,
County of Multnomah—ss.

I, M. B. Strayer, being first duly sworn, depose and say:

That I am one of the attorneys for appellant, The Pullman Company, in the above entitled cause. Plaintiff's Exhibits 1, 2, 3, 4 and 5 are statements showing various expenses incurred by plaintiff-appellee and were introduced in evidence solely for the purpose of showing the amount of special damages sustained. Defendants' Exhibit 9 is a working diagram of Pullman Car 4199 and was introduced in evidence solely for the purpose of showing that the berth assigned to plaintiff-appellee prior to her injury was the only space available. Defendants' Exhibit 10, purporting to be a statement signed by plaintiff-appellee, and defendants' Exhibit 13, the adverse party deposition of plaintiff-

appellee, were introduced in evidence solely for purposes of impeachment of plaintiff-appellee. None of the exhibits mentioned above is material to the questions raised in this appeal.

Defendants' Exhibits 5½, 6, 7 and 8 are photographs of the interior of a Pullman car and are material in considering the questions raised in this appeal, but, because of their character, they cannot practicably be reproduced in the printed record on appeal.

/s/ M. B. STRAYER,

Subscribed and sworn to before me this 29th day of January, 1948.

[Seal] /s/ FREDERICK H. TORP,

Notary Public for Oregon.

My commission expires July 5, 1950.

[Endorsed]: Filed January 31, 1948.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION

It is hereby stipulated by appellant and appellee, through their respective attorneys of record, that plaintiff's Exhibits 1, 2, 3, 4 and 5 and defendants' Exhibits 9, 10 and 13 are not material to the questions raised in this appeal and that defendants' Exhibits 5½, 6, 7 and 8 are photographs which cannot practicably be reproduced in the printed record on appeal. Application is therefore made for an

order dispensing with the necessity of printing such exhibits and providing that they may be considered in their original form without reproduction in the printed record on appeal.

Dated at Portland, Oregon, this 29th day of January, 1948.

/s/ M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Appellant.

/s/ T. H. RYAN,
Of RYAN & PELAY,
Attorneys for Appellee.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT WILL RELY ON APPEAL

To the Clerk of the Above Entitled Court:

The appellant, for its statement of points upon which it will rely on appeal, hereby adopts the statement of points appearing in the certified transcript of record herein.

/s/ M. B. STRAYER,
HART, SPENCER,
McCULLOCH & ROCKWOOD,
Attorneys for Appellant,
The Pullman Company.

State of Oregon,
County of Multnomah—ss.

Due service of the within statement of points upon which appellant will rely on appeal is hereby accepted at Portland, Oregon, this 29th day of January, 1948, by receiving a copy thereof, duly certified to as such by M. B. Strayer of attorneys for appellant.

/s/ T. H. RYAN,

Of attorneys for Appellee.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL TO BE PRINTED

To the Clerk of the Above Entitled Court:

The record on appeal having been transmitted by the clerk of the District Court to the clerk of the United States Circuit Court of Appeals, the appellant hereby designates the following to be included in the printed transcript of record herein:

1. The entire certified transcript of record herein, including reporter's transcript of testimony, depositions and original exhibits, except such exhibits as the court may order shall be considered in their original form without the necessity of reproducing in the printed record.
2. Statement of points upon which appellant intends to rely on appeal in the Circuit Court of Appeals.

3. Designation of contents of record on appeal to be printed.
4. Order (if granted by the court) dispensing with the necessity of printing exhibits.

/s/ M. B. STRAYER,
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1410 Yeon Building,
Portland 4, Oregon.
Attorneys for Appellant.

State of Oregon,
County of Multnomah—ss.

Due service of the within designation of contents of record on appeal to be printed is hereby accepted at Portland, Oregon, this 29th day of January, 1948, by receiving a copy thereof, duly certified to as such by M. B. Strayer of attorneys for appellant.

/s/ T. H. RYAN,
Of Attorneys for Appellee.

No. 11840

United States Circuit Court of Appeals

For the Ninth Circuit

THE PULLMAN COMPANY, a corporation

Appellant

v.

MAGGIE MAE TEUTSCHMAN,

Appellee

Upon Appeal from the District Court of the United States
for the District of Oregon.

BRIEF OF APPELLANT

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No. 11840

United States Circuit Court of Appeals

For the Ninth Circuit

THE PULLMAN COMPANY, a corporation

Appellant

v.

MAGGIE MAE TEUTSCHMAN,

Appellee

Upon Appeal from the District Court of the United States
for the District of Oregon.

BRIEF OF APPELLANT

JURISDICTION OF THE COURT

This action was originally instituted in the Circuit Court of the State of Oregon for the County of Multnomah, and was removed by the defendants to the District Court of the United States for the District of Oregon (R. p. 9). Jurisdiction of the District Court

was founded on diversity of citizenship, Section 41-1 of the Judicial Code (28 U. S. C. A. 41-1). The removal proceedings were pursuant to 28 U. S. C. A., Section 71.

Jurisdiction of the Circuit Court of Appeals is founded upon Section 128, as amended, of the Judicial Code (28 U. S. C. A., Section 225(a)(1)). This appeal has been taken from a final decision of the District Court of the United States for the District of Oregon within the meaning of Section 128 of the Judicial Code.

STATEMENT OF CASE

This action was instituted by the appellee, Maggie Mae Teutschman, against the appellant, The Pullman Company, and Southern Pacific Company, to recover damages for personal injuries sustained on January 9, 1946, while appellee was riding as a passenger on appellant's tourist car attached to a Southern Pacific train. The action was later dismissed as to Southern Pacific Company (R. p. 21). The injuries are alleged to have been sustained when appellee fell from an upper berth.

The charges of negligence against appellant, as set forth in the amended complaint (R. pp. 11, 14) and

as settled by the pretrial order (R. pp. 21, 24) were that appellant failed to equip the berth with curtains and protective straps and to close and fasten the curtains; that it failed to advise the appellee concerning the necessity and manner of properly fastening the curtains and was negligent in requiring the appellee to take an upper berth. The charges of negligence were denied by appellant, which contended appellee's injuries were proximately caused by her failure to take any care or precaution for her safety, her failure to fasten the buttons on the curtains, permitting the curtains to become parted in such a way as to allow her to fall from the berth, and failure to use her senses and faculties to avoid injury to herself.

At the trial there was a sharp conflict in testimony concerning the accident. Appellee's version was that appellant had assigned her to an upper berth not equipped with curtains or protective devices to prevent her from falling; that nevertheless she retired and fell asleep and that during the night she fell from the berth.

Appellant's testimony was that the berth was equipped with the usual Pullman curtains, securely fastened at top and bottom to rods secured to the berth; that after appellee had retired the porter closed

the curtains; that during the night appellee was found in the aisle of the car, at which time the curtains were observed to have been pulled slightly apart; that because of the manner in which the curtains were affixed to the berth it would have been impossible for appellee to have fallen in the manner claimed. It was appellant's theory that appellee was injured when she attempted to leave her berth without requesting assistance.

Because of the findings entered by the court, which will hereinafter be discussed, the appellee's condition prior to the accident, within the knowledge of appellant, is material. In this regard, appellee presented no evidence of an abnormal condition prior to the accident. She testified that she was 63 years of age and before the accident was slightly lame, due to an old injury to her right hip; that her lameness did not affect her health in any way and did not interfere with her performance of work, and, in fact, was hardly noticeable. Appellee testified that prior to the accident she was feeling "wonderful" and not suffering any pain; and that she took no medicine either before or after retiring.

On the other hand, evidence was presented by appellant that when appellee first entered the car the

conductor received the impression that she was intoxicated, but when he talked with her he realized she was not. There was also testimony that while waiting for her berth to be made up, she swallowed a large yellow capsule, the nature of which was unknown to appellant. After retiring, she rang the bell for the porter and when the conductor answered, asked for water to take some medicine. Following the accident and after appellee had been removed to a hospital at Redding, California, a yellow capsule was found in her berth. At the hospital the attendants found in her effects a bottle of nembutal capsules. It was the opinion of the attending physician that she had taken at least two of them, which accounted, in his opinion, for a drowsy condition causing her to sleep heavily despite her injury.

At the close of the testimony appellant moved to dismiss the case on the ground that under the facts and law appellee was not entitled to any relief. The court denied the motion and took the case under advisement. Several days later the court rendered a memorandum decision holding that the proximate cause of the accident was the failure of appellant to see that the inside buttons on the upper curtains were fastened which, in the court's opinion, would have

prevented appellee either from getting out or falling out of the berth; and permitted the complaint and pretrial order to be amended accordingly (R. p. 29). Pursuant to this memorandum decision, an order was entered on September 29, 1947, amending the amended complaint and pretrial order as directed by the court (R. p. 30), and on October 4, 1947, the court entered findings of fact and conclusions of law and judgment for appellee in the amount of \$5500.00, general damages, and \$1286.50, special damages (R. pp. 31, 34). Thereafter appellant filed a motion to amend the findings to make specific findings concerning the charges of negligence on which the case was tried (R. p. 35). The court allowed the motion to the extent of finding that the berth was equipped with curtains securely affixed at top and bottom to rods extending the full length of and parallel with the berth, but denied the remainder of the motion (R. p. 37).

This appeal concerns whether there was any substantial evidence to sustain the findings of the court.

SPECIFICATIONS OF ERROR

1. The District Court erred in finding that appellant was negligent in failing to fasten the inside buttons on the curtains of appellee's berth.

2. The District Court erred in finding that the injuries to appellee were proximately caused by appellant's failure to fasten the inside buttons on the curtains of her berth.

3. The District Court erred in finding that the injuries to appellee were not proximately caused by her contributory negligence.

4. The District Court erred in overruling appellant's motion to dismiss.

5. The District Court erred in permitting amendment of the amended complaint and pretrial order after the cause had been submitted.

SUMMARY OF ARGUMENT

1. There was no substantial evidence of any abnormal condition of appellee within the knowledge of appellant sufficient to impose upon appellant the extraordinary duty to fasten the inside buttons of the curtains on appellee's berth.

2. Fastening the buttons would have been a futile precaution and the failure to so fasten them was not the proximate cause of the accident.

3. Appellee was contributorily negligent in separating the curtains and attempting to leave the berth

without assistance, or placing herself in a position where it was possible for her to fall from the berth.

4. There being no evidence of negligence by appellant which proximately caused the accident and appellee having been contributorily negligent, the motion to dismiss should have been allowed.

5. The question whether appellee was in such abnormal condition as to require of appellant the extraordinary precaution of fastening the inside buttons on the curtains was not an issue at the trial and the court should not have based a finding of liability thereon.

ARGUMENT

1. There was no substantial evidence of an abnormal condition of appellee, within the knowledge of appellant, requiring it to take extraordinary precautions for her safety.

As indicated in the foregoing statement, the decision of the District Court was based upon findings entirely foreign to the issues in the pleadings or pre-trial order. The controversy at the trial concerned whether there were any curtains on the berth, whether they were fastened at the bottom to a rod extending the length of the berth, and whether they were closed.

The District Court found the first two of these issues against appellee and declined to make any finding concerning the third (R. p. 37). It found, however, that appellant was negligent in failing to fasten the inside buttons on the curtains, which, it believed, would have prevented appellee either from *getting out* or falling out of the berth.

The failure to make a finding concerning the position of the curtains requires the assumption that they were closed, for the purpose of determining whether appellant was negligent. *Erdman v. United States, et al.*, 143 F. (2d) 198. Certiorari denied 65 S. Ct. 122, 323 U. S. 769, 89 L. Ed. 615. The testimony established that with the curtains closed, it would have been impossible for appellee to have fallen from the berth (R. pp. 151, 165, 167, 169). The testimony of all witnesses who observed the berth shortly after the accident was that the curtains had been parted only about six to fourteen inches (R. pp. 145, 165, 169, 177), thus indicating that appellee must have been injured when she attempted to leave her berth without requesting assistance. The District Court's finding that fastening the inside buttons would have prevented appellee from *getting out* of the berth indicates that the District Court accepted this version of the manner in which the accident occurred. How-

ever, it believed that appellant was under obligation not only to take precautions against appellee's falling from the berth but also against her attempting to leave the berth.

We do not understand it to be the view of the District Court that the obligation to fasten the inside buttons on the curtains applies to sleeping car companies under all circumstances. The Court's opinion is predicated upon its finding that appellee was in such crippled and confused condition, within the knowledge of appellant, that an additional obligation existed to protect the appellee from her own voluntary acts.

Appellant contends that there is no substantial evidence that appellee was crippled or confused, within appellant's knowledge, to such an extent as to require this unusual precaution. The conclusion that she was crippled or confused in any degree can be reached only by rejecting her testimony in its entirety as unworthy of belief. Thus, she testified that prior to the accident she was in perfect health (R. p. 49); that although she had an old abscess in the groin, causing her to limp slightly, this did not affect her health in any way and did not prevent her from performing her work (R. p. 50). She testified that

when she boarded the train she felt “wonderful”; that she took no medicine of any kind and was not suffering from any pain (R. pp. 99, 100). Thus, if her testimony were accepted, there could have been no duty to exercise any unusual precautions.

Apparently, however, the District Court did not consider her testimony in this regard as worthy of belief and inferred from appellant’s evidence that she was in such crippled and confused condition as to require precautions amounting to physical restraint. It is submitted that appellee is bound by her testimony concerning her condition prior to the accident and cannot now assert that her condition was such as to require extraordinary precautions by the appellant. The rule in this regard is stated in 80 A. L. R. 625-627, as follows:

“A majority of the cases support the rule that a party is concluded by his own testimony which is favorable to the adverse party.”

* * * * *

“The statement which comes nearest to enunciating a true general principle seems to be that of the Massachusetts Court in *Hill v. West End Street R. Co.* (1893), 33 N. E. 582, that a party may be permitted to contradict his own testimony ‘if the circumstances are consistent with honesty and good faith.’ ”

* * * * *

“If a party’s testimony consists only of a narrative of events in which he participated or which he observed, there is an obvious possibility that he may be mistaken like any other witness. In such a situation, if other witnesses give a different version of the occurrence, his testimony must be weighed with their’s, and he will not be concluded by his own statements. But when a party testifies to facts in regard to which he has special knowledge, such as his own motives, purposes, or knowledge, or his reasons for acting as he did, the possibility that he may be honestly mistaken disappears. His testimony must be either true or deliberately false. To allow him to contradict his own testimony under those circumstances would not be ‘consistent with honesty and good faith.’ Whether his statements be true or false, he will be bound by them, and possible contradictions by other witnesses become immaterial. He will not be allowed to obtain a judgment based on a finding that he has perjured himself. * * * But when a man of mature years and unimpaired mentality testifies understandingly and definitely to facts peculiarly within his knowledge, any rational conception of justice demands that he be judged by what he says.”

In *L. P. Larson, Jr. Co. v. Wm. Wrigley, Jr. Co.* (1918), 253 Fed. 914 (Certiorari denied 248 U. S. 580), the court said:

“In a real and legitimate controversy, a party should be left within the knot of his averments in pleadings and admissions in testimony, unless the court can find an absolute demonstration from other evidence in the case or from facts within judicial notice, like the laws of physics, etc., that under no circumstances could the averments and admissions be true.”

In *Van Meter v. Zumwalt* (Idaho, 1922), 206 Pac. 507, the plaintiff, when called as a witness in his own behalf, on cross examination, repudiated the very grounds on which rested the cause of action stated in the complaint. The court held that the statements constituted informal judicial admissions, which were accorded the quality of prima facie proof.

In *Jacobs v. Cedar Rapids* (Iowa, 1917), 164 N. W. 891, the court said:

“While a party is at liberty to show by one witness what is opposed to the testimony given by another, this will not permit such party for his own advantage to say that the testimony given by himself shall be treated as false and that of an opposing witness as true.”

In *Stearns v. Chicago R. I. & P. R. Co.* (Iowa, 1914), 148 N. W. 128, it was held that a party to a suit is bound by his own testimony, which he does not, at any time, seek to correct or change during the course of the trial.

In *Dunham v. Carbon, Coal & Mining Co.* (Kan., 1879), 15 Mo. Min. Rep., the court said:

“Where testimony is drawn from the lips of a party or his agent, no wrong will ordinarily be done such party if the testimony so given be accepted as true. A party’s admissions are good against him; so is his testimony.”

In *Steele v. Kansas City S. R. Co.* (Mo., 1915), 175 S. W. 177, the court, in holding a party bound by his admission of facts showing contributory negligence, said:

“No litigant in his own sole case ought to be heard by a court, without some explanation or excuse, to deny today what he solemnly swore was true on yesterday.”

It is obvious that appellee’s lameness had nothing whatever to do with the accident. If the appellee was in any degree confused prior to the accident, the explanation must be found in the appellant’s testimony that she took certain medicine shortly before and after retiring, which testimony was denied by appellee (R. p. 99). Only the appellee knows with certainty what her condition of mind was at the time she retired to the berth. She should be held bound by her testimony in that regard and should not now be permitted to assert that she was not in a condition to exercise care for her safety.

Even if appellee is permitted to ignore her own testimony and resort to appellant's evidence for support, a review of such evidence reveals nothing from which to infer that appellee was unable to care for herself, or that appellant had knowledge of any condition which would require the extraordinary precaution of buttoning the curtains. According to appellant's testimony, the conductor and porter first saw appellee approaching the Pullman car from the station at Martinez, California. She was limping and carrying a shopping bag and violin case (R. pp. 140, 157). Arriving at the car, she showed the conductor her ticket, which was for an upper berth on a following train (R. p. 157). When she complained about going back to the station to wait for the proper train, the conductor "took pity on her" because she was poorly dressed and crippled and agreed to give her a berth on his train. She did not appear to be in any pain (R. p. 158).

After getting on the car appellee asked for a glass of water to take some medicine and swallowed a large capsule, the nature of which was unknown to the conductor. While the conductor's first impression was that she had been drinking, when he talked with her he realized she had not (R. p. 159). When asked what gave him the first impression, he replied: "Just

her actions, acting like a person who had been drinking" (R. p. 160). When her berth was made up the porter helped her in and pulled the curtains (R. pp. 142, 143, 161). These curtains were attached to rods at top and bottom in such manner that with the curtains closed it was impossible for a person to fall out of the berth (R. pp. 151, 165, 167, 169).

Later that night the conductor noticed that the curtains were closed (R. p. 161). Once he saw appellee's foot protruding from the berth and shoved it back in. She did not awaken and he closed the curtains again (R. p. 161). Later appellee rang the bell and when the conductor answered, she asked for water to take some medicine. He brought her the water but did not see her, as the curtains were closed (R. p. 162).

The foregoing is a fair summary of all of the evidence concerning any knowledge of appellant about the condition of appellee prior to her injury. From the testimony by deposition of Dr. McVickers, who treated appellee after her removal to the hospital at Redding, California, it is fairly evident that appellee had been taking nembutal capsules in sufficient quantities to have affected her in some degree. It was his opinion that at least two of such capsules would have been necessary to have produced the condition in

which he observed the appellee at the hospital the following day (R. pp. 186, 201).

Appellee denies having taken any medicine and the only evidence as to the quantity which she may have taken, aside from Dr. McVicker's testimony, is the conductor's testimony of one capsule taken shortly before she retired and, persumably, one capsule after she retired. It is a fair assumption that these capsules, and perhaps others she had taken earlier, produced the condition in appellee which Dr. McVickers noted on the following day. In view of the evidence concerning the position of the curtains before and after the accident, it is also a fair assumption that for some unexplained reason appellee attempted to leave the berth during the night, and in so doing fell to the floor.

The question to be determined is whether appellee's condition, within the observation of the conductor and porter, was such that they reasonably should have anticipated an irresponsible act on her part. It seems clear that the information available to the conductor and the porter did not indicate such "confusion" that they should have anticipated she would try to leave the berth without assistance. The conductor did not know the contents of the capsules. While he at

first thought she was intoxicated, he realized she was not when he talked with her. There was, therefore, nothing in the way of notice to the conductor other than a superficial appearance of intoxication. It is submitted that under these circumstances appellant's employees were not bound to anticipate a willful or irresponsible act such as an attempt to leave the upper berth without assistance.

It is recognized that a sleeping car company owes a high degree of care towards its passengers and that the care must be commensurate with the circumstances within the knowledge of the company. 13 C. J. S. 1256. It is also recognized that a duty of additional care exists where the company has knowledge of a disability requiring such additional care. 13 C. J. S. 1289. But the duty is measured by the company's knowledge. 13 C. J. S. 1290. It need not exercise every possible care and need not act as guardian over passengers to the extent of coercing them into exercising ordinary care. It is not bound at its peril to render an injury impossible and it may assume that the passenger will act with due regard for his safety. 13 C. J. S. 1260, Note 92. The care required in a particular instance where a passenger is disabled is the care commensurate with the manifest disability. Whether a particular precaution is necessary depends

upon whether the carrier has notice of a condition from which it should anticipate an accident unless such precaution is taken. *Hicks v. Scott, et al.* (Cal.), 120 P. (2d) 107, 109.

The rule requiring extraordinary precautions is frequently applied in the case of children, elderly persons, intoxicated persons and those who are mentally deranged. Appellee did not fall within any of these classes, but the rules applied in such cases should be helpful in determining what duty was imposed upon appellant's employees.

It is the rule that mere intoxication imposes no additional duty upon a carrier unless the passenger is helpless and unable to look out for his own safety. 13 C. J. S. 1292. Thus, in *Louisville & N. R. Co. v. Barnes' Adm'x.* (Ky., 1944), 180 S. W. (2d) 546, it appeared that an intoxicated passenger had been killed when he got off the train. It was claimed that the carrier's employees should have restrained him. In denying recovery the court found it significant that while the passenger had staggered, he was able to walk down the aisle, give his ticket to the conductor and perform other usual acts accompanying travel. It concluded that the proof was insufficient to show that the passenger was so helpless that the carrier's employees

should reasonably have known that he was unable to care for himself.

In *Louisville H. & St. L. Ry. Co. v. Gregory's Adm'r.* (Ky., 1911), 133 S. W. 805, the court held that a train crew was not required to anticipate that merely because a passenger is intoxicated he will necessarily expose himself to danger.

The case of *Louisville & N. R. Co. v. Mudd's Adm'x.* (Ky., 1917), 191 S. W. 102, involved the death of an intoxicated passenger who was killed when he fell or jumped from the train. The court found that the decedent's behavior on the train did not indicate that he was in such a state of intoxication that the employees of the carrier should have anticipated the injury.

As we have stated, appellee's accident can be accounted for only upon the assumption that she tried to leave her berth. If she was then irresponsible and helpless, such condition obviously was brought about as a result of her taking two capsules of nembutal while on the train. There was no evidence that she was in any way irresponsible or helpless before she retired to her berth. In fact, the evidence is to the contrary. At Martinez, California, she changed trains, and after awaiting the arrival of Train No. 18, she

carried her baggage to the train and presented her ticket to the conductor. The fact that she chose the wrong section of the train was a natural error and does not indicate that she was irresponsible or helpless. According to the conductor, when she was informed that she had the wrong train, she complained about going back to the station and was, therefore, permitted to take passage on Train No. 18. She asked the conductor for a lower berth and asked for water with which to take some medicine. After retiring, she rang the bell for the porter. All of these were the acts of a normal individual and rebut any inference that she required special care or that the carrier should have anticipated that she would render herself so irresponsible that she would require physical restraint.

The basis for the ruling of the District Court would impose an unreasonable burden upon carriers. Only reasonable care was required, commensurate with any unusual conditions which were visible to the appellant's employees. They were entitled to assume that appellee was sane and sober until the contrary appeared. *Sullivan v. Seattle Electric Co.* (Wn., 1908), 97 Pac. 1109. Before the appellant should be held to the duty of physically restraining the appellee, it would seem that the appellee must show that her con-

dition, within the knowledge of the appellant, was such that it should have anticipated irresponsible acts.

In *Chicago, R. I. & G. Ry. Co. v. Sears* (Texas, 1919), 210 S. W. 684, the court observed that while the carrier must bestow upon a passenger who is mentally incapable of caring for himself any special care which reasonable prudence and foresight demands for his safety, considering the conduct and disposition of mind manifested by the passenger, or any conduct or disposition which might reasonably be anticipated from one in his mental condition, "the additional care in such case, however, is measured by the knowledge which the carrier had or should obtain by observation of the passenger's incapable condition." It found that where the only information the carrier had as to the mental condition of a passenger was that he was laboring under the delusion that someone wanted to kill or rob him, the crew in charge of the train could not anticipate that he would leave the train while it was in motion or thereafter voluntarily injure himself.

A similar decision was rendered in *St. Louis Southwestern Ry. Co. of Texas v. Adams* (Texas, 1914), 163 S. W. 1029. In this case a demented woman, under the delusion that she was about to be robbed, jumped

through the window of a train. Prior thereto she was apparently asleep. The court held there was nothing in her actions to indicate to the carrier that she was about to jump through the window.

In *Watts v. SP&S* (Or., 1918), 88 Or. 192, 171 Pac. 901, the court said:

“The rule with respect to the duty owing persons of advanced age or other disability is that they should be given such assistance as their appearance reasonably indicates is necessary; and the train employee is bound to consider only such facts with respect to the passenger’s condition as are within his knowledge, or are made known to him through the passenger’s appearance, or otherwise.”

In the case of *Price v. St. Louis, I. M. & S. R. Co.* (Ark., 1905), 88 S. W. 575, where an intoxicated passenger went upon the platform of the train and fell therefrom, the court said:

“... The railroad company must bestow upon one in such condition any special care and attention, beyond that given to the ordinary passenger, which reasonable prudence and foresight demand for his safety, considering any manner of conduct or disposition of mind manifested by the passenger and known to the company, or any conduct or disposition that might have been reasonably anticipated from one in his mental

and physical condition, which would tend to increase the danger to be apprehended and avoided.”

In *Trippett v. Monongahela West Penn Public Service Co.* (W. V., 1925), 130 S. E. 483, where a boy fell from a platform of a train, it was contended that the carrier should have kept him inside the car. It was held that the high degree of care required of the carrier is more strictly applicable to its affirmative acts or omissions of duty toward the passenger than to the control of his person or conduct after he has become a passenger. It was said that the duty did not go to the range of impossibility or unreasonableness.

In the case at bar the appellee was asleep shortly before the accident. The absence of findings concerning the position of the curtains on her berth requires the assumption that they were closed. It is common experience that there is no danger of falling from a berth on a sleeping car when the curtains are closed, even though they may not be buttoned. Appellant's employees could not anticipate an accident unless they could anticipate that appellee would attempt to leave the berth without help. To assume that she would be disposed to do so the crew must have had knowledge that she was irresponsible. Necessarily the members of the crew could not have acquired such

knowledge because, on the occasion of the last contact between members of the crew and appellee prior to the accident, she was not irresponsible; and if she became so, it must have been the result of the nembutal capsules which she took shortly before and after retiring.

While appellant knew that appellee was taking some kind of medicine, it could not anticipate that these capsules would produce such an irresponsible condition that appellee would attempt to leave the berth without ringing the bell for the porter. Appellant's employees had no means of knowing what the capsules contained; and had they had this information, they would have been justified in assuming that the medicine would induce sleep, rather than departure from her berth. The knowledge of appellant's employees surely was not sufficient to require them to take measures amounting to physical restraint. They could hardly anticipate that she would attempt to leave her berth without ringing the porter's bell for assistance.

It is therefore submitted that there was no substantial evidence upon which to base a finding that appellant was negligent in failing to fasten the inside buttons on the curtains.

2. The failure of appellant to fasten the inside buttons on the curtains of appellee's berth was not the proximate cause of the accident.

In order to constitute proximate cause it must appear that the act or omission complained of was one without which the accident would not have happened. As pointed out, the position of the curtains after the accident points conclusively to the fact that the accident could not have happened in the manner claimed by appellee and must have happened when appellee separated the curtains and crawled or slid through the opening. The District Court's ruling appears to recognize the truth of this assertion, but assumes that appellee was so irresponsible, within the knowledge of appellant, that she should have been confined and physically prevented from leaving the berth by fastening the inside buttons on the curtains.

According to the testimony, the inside buttons on the curtains are intended for the use of the passenger (R. p. 143). Assuming that it was possible to fasten these buttons from the outside, which may be doubted in view of the construction of the curtains (see Exhs. 5, 6, 7 and 8), there would have been nothing to prevent the appellee from unbuttoning the curtains and leaving the berth. If she was able to spread the curtains apart and leave the berth, it seems unrea-

sonable to suppose that she was incapable of unfastening the buttons if they had been fastened. In fact, it is by no means clear that even with the buttons fastened appellee would not have been able to leave the berth in the same manner that she must have left it when she received her injuries.

We think it clear that the proximate cause of the accident was appellee's act in separating the curtains and attempting to leave the berth and that any negligence of the appellant became remote upon the doing of this act by appellee. In 38 Am. Jur. 735, it is said:

“ . . . In fact, the chain of causation between the defendant's negligence and the plaintiff's injury is broken when an independent act of the plaintiff, not within the reasonable contemplation of the defendant, intervenes to bring about the injury. Under such state of facts, the negligence of the defendant is regarded as the remote cause and the intervening act of the plaintiff as the proximate cause of the injury. This is true whether or not the plaintiff's act amounts to contributory negligence and whether or not the infancy of the plaintiff precludes contributory negligence on his part.”

The act of appellee in separating the curtains and attempting to leave the berth surely was an independent act of the appellee not within the reasonable contemplation of appellant and was thus sufficient to

break the chain of causation. But if it was not an independent act beyond the reasonable contemplation of appellant, buttoning the curtains would have been a futile precaution. Surely there is no reason to believe that appellee would not have unbuttoned the curtains, in which case the accident would have happened in the precise manner that it did happen.

It is therefore submitted that the District Court erred in finding that failure of appellant to fasten the inside buttons on the curtains was the proximate cause of the accident.

3. Appellee's injuries were proximately caused by her contributory negligence.

As stated above, the District Court found that appellee's berth was equipped with curtains properly affixed to rods at the top and bottom and extending the full length of the berth, but declined to make a finding whether the curtains had been closed. We find it difficult to discuss this specification because of uncertainty as to the court's views concerning the position of the curtains. If the court had found that the curtains were not closed, we believe contributory negligence of appellee would be self-evident, since she retired and went to sleep without looking for curtains, asking for them or taking any precautions to

prevent her falling (R. pp. 93, 94). However, since the court based its finding of liability upon the failure to fasten the inside buttons on the curtains and not upon the failure to close the curtains, we assume for the purpose of discussion of this specification of error that the curtains were closed after appellee had retired.

It is established by the evidence that because of the manner in which the curtains were constructed it would have been impossible for a person to fall from the berth when the curtains were closed. It is also established by the testimony that following the accident the curtains were observed to be spread apart only six to fourteen inches. It is therefore evident that appellee's injuries resulted from her act in spreading the curtains and placing herself in such position that it became possible for her to fall through the opening to the floor.

Assuming that appellant was negligent in failing to fasten the curtains, it would seem that appellee was equally negligent in failing to do so; and that she was also negligent in spreading the curtains apart and attempting to leave the berth, or placing herself in such a position that she could fall through the opening.

The rule is well established that a passenger must exercise care for his own safety. 13 C. J. S. 1575. He must take notice of the usual and obvious hazards and there is no duty to warn him of an obvious danger. Even though the carrier is negligent the passenger must, if he knows of such negligence, take due precautions for his safety; and if injury arises from the want of ordinary or proper care on his part the carrier is not liable. *Dahl v. Minn. St. Paul & S. S. M. Ry.* (N. D., 1929), 223 N. W. 37.

In the case of *Pazik v. Milwaukee Electric Ry. & Transport Co.* (Wis., 1944), 245 Wis. 583, 15 N. W. (2d) 804, 805, it was charged that a bus driver was negligent in failing to assist a disabled passenger to arise from her seat. Rejecting this contention, the court said:

“It should be noted that the jury found the plaintiff not negligent in attempting to arise, without aid. If knowledge were attributable to the driver that plaintiff needed aid to arise, it would certainly be attributable to the plaintiff, who certainly knew her own condition better than the driver could possibly have known it. If the driver was negligent in not assisting her to rise, she with like reason was negligent in attempting to rise without asking his assistance when he was sitting within a foot or two from her.”

Likewise, in this case, if it was negligence for the appellant to fail to fasten the buttons on the curtains of appellee's berth, it was also negligence for her to fail to do so; and it was negligence for her to spread the curtains and to place herself in a position where it was possible to fall. This is not a case of a hazard peculiar to travel by train which was unknown to appellee. The danger of falling from high places is by no means confined to travel in Pullman cars. Appellee was well aware of this danger, for she testified that she protested against being required to ride in "that high berth" (R. p. 56).

The District Court's ruling apparently excuses appellee from taking any precautions for her own safety because of her alleged "confused and crippled condition." In the discussion of the first specification of error we have stated fully our position in this regard. We believe that appellee is bound by her testimony that she was in perfect health; and that in any event there is no substantial evidence that she was in such abnormal condition that she should be excused from taking ordinary precautions for her safety.

4. The motion to dismiss should have been allowed.

Appellant's motion to dismiss, made at the close of the testimony, raised the question whether there

was any substantial evidence of negligence on the part of appellant which proximately caused appellee's injuries, and whether appellee was guilty of contributory negligence. Reference is made to the discussion of specifications of error 1, 2 and 3, which fully states appellant's position concerning these matters. If any one of these propositions is well taken, it must follow that the motion to dismiss should have been sustained.

5. There was no issue at the trial of whether appellee's condition was so abnormal as to require appellant to fasten the inside buttons.

As we have stated, this case was tried on charges of negligence entirely foreign to that found by the District Court. Appellee did not contend at the trial that because of any incompetent condition on her part there was a duty on appellant to fasten the inside buttons on the curtains, and appellant had no knowledge that any such issue was involved. Appellee's contention was that there were no curtains on the berth; or if there were curtains, they were not closed and were not buttoned around the rod at the bottom of the berth so as to prevent appellee from falling from the berth. Instead of contending that she was incompetent to take precautions for her own safety, appellee insisted that she was perfectly normal.

Appellant's testimony concerning appellee's appearance and actions was introduced and was pertinent only for the purpose of presenting its theory of how the accident had happened and as bearing upon appellee's credibility. Consequently, aside from the testimony that the inside buttons on the curtains were intended for use of the passenger, no evidence was presented concerning the reasons why appellant's employees did not fasten the inside buttons; or their observations bearing upon appellee's ability to take precautions for her safety.

At the close of the testimony the court took the case under advisement and it was not until several days later, when the District Court rendered its memorandum decision, that appellant was advised of any issue concerning an asserted duty to fasten the inside buttons on the curtains arising by reason of a crippled or confused condition of appellee. It is entirely conceivable that there were compelling reasons why the buttons were not fastened by appellant. In fact, defendants' Exhibits 5, 6, 7 and 8 would indicate that it is impossible to do so from outside the berth. The purpose of such buttons is, of course, to enable the passenger to insure himself of privacy and control over access to the berth, which is ingeniously accom-

plished by affixing the buttons to an inner flap in such way that they do not extend through and are not visible from outside the curtains (see defendants' Exhs. 5, 6, 7 and 8). Appellant had no opportunity to anticipate this charge of negligence or to explain it.

We are aware of the fact that under Rule 15, Federal Rules of Civil Procedure, where issues not raised by the pleadings are tried and submitted by mutual consent, the court may treat them as having been pleaded. However, this rule is not applicable where there was no such issue and the evidence relied upon was received as being competent and material upon other issues and merely incidentally tended to prove another fact not in issue. *Simms v. Andrews* (C. C. A. 10), 118 F. (2d) 803, 807; *Allegheny County, Pa. v. Maryland Casualty Co.* (D. C. Pa., 1941), 42 F. Supp. 677. The rule should not be applied when the factual issue would be changed without an opportunity to defendant to make preparation to meet the changed situation. *Smith v. White, et al.* (D. C. Mo., 1942), 48 F. Supp. 554.

In *Sears, Roebuck & Co. v. Marhenke* (C. C. A. 9), 121 F. (2d) 598, this court held that Rule 15 had no application where the action was tried as one for negligence and the issue of liability for breach of

warranty, not raised in the pleadings, was not tried by the "express or implied consent of the parties."

In this case there was no issue at the trial of such an abnormal condition of appellee as would impose the unusual duty on appellant to fasten the inside buttons, and such an issue was not tried either by express or implied consent of the parties or otherwise. In these circumstances we believe Rule 15 should not have been applied and its application unfairly deprived appellant of the opportunity to submit evidence on an issue it did not know and had no way of knowing was in the case.

It is, therefore, respectfully submitted that the judgment of the trial court was erroneous and should be reversed.

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In the United States
CIRCUIT COURT OF APPEALS
for the Ninth Circuit

THE PULLMAN COMPANY, a corporation,
Appellant

v.

MAGGIE MAE TEUTSCHMAN,
Appellee

Upon Appeal from the District Court of the United
States for the District of Oregon

APPELLEE'S BRIEF

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APPELLEE'S BRIEF

APPELLEE'S STATEMENT OF FACTS

Plaintiff-appellee purchased a ticket on the Los Angeles, Portland Southern Pacific train at Los Angeles, California. At the same time she also purchased a lower berth for the night of January 9, 1946, on Appellant's sleeping car. She occupied a seat in the chair car of the Southern Pacific Railway during the daytime part of her journey, and it was necessary for her to change trains to get on Appellant's sleeping car in which she had a berth. Following the direction of the Pullman Conductor she boarded a certain sleeping car operated by Appellant.

She was then informed that she did not have a ticket for a lower berth and would have to occupy an upper berth. At this junctore she informed both the Conductor of the Pullman car and the Pullman porter that she had never ridden on a sleeping car before, that she was unacquainted with the use of sleeping-car berths, and particularly an upper berth (Appellee using the words "It's all Greek to me.") (R. 56), and she expressed great fear and reluctance to entering the upper berth. She further stated that she did not want to go up the ladder used to assist passengers into upper berths and was afraid to occupy the upper berth (R. 55-56). She was confused, tired and excited.

Despite these warnings, her confusion, age and excitement, she was given no instructions regarding the occupancy and use of an upper berth, nor as to the fastening of the curtains or safety devices. Further, she saw no curtains on the berth, and if there were any the porter did not pull them closed or inform her about them. She was permitted to fall to sleep without removing her clothes and without the curtains being pulled.

Appellee is an elderly woman of eccentric habits and appearance, without any prior experience on a sleeping car. The record shows that she called to the attention of Appellant's servants by her conduct and her words this lack of experience. Witnesses for Appellant also testified as to her confusion, her peculiarity and infirmity. (R. 130-135, 140-152, 154-167, 175-178, and page 216.) Naturally Appellee was her only witness regarding the accident as she was traveling alone; but the trial court was

in a position to observe and did observe the Appellee during the course of the trial and her testimony. It is evident that the court's observation of her conduct and appearance during the trial influenced its decision.

Some time during the night, while asleep, Appellee was caused to fall from the upper berth. She was next aware of events when on the floor of the sleeping car. Shortly thereafter she lost consciousness and regained full consciousness only after she had been treated for her injuries at the hospital.

She received serious personal injuries and the Court awarded damages as set out in Appellant's statement of facts in this case.

Appellant's witnesses contended that Appellee gave the appearance of intoxication and attributed her apparent intoxication, not to liquor, but to nebutol tablets which she was alleged to have been taking. There was no direct evidence of her having taken said tablets, but it was contended by Appellant that such was the case. Regardless of whether or not she was under the influence of this medicine, it is agreed that she did not give the appearance of normality to the employees of the Pullman Company. (R. 159-160.)

Plaintiff-appellee alleged in her complaint, and it was made an issue in the pre-trial order, that she was an elderly woman and unfamiliar with travel. The Court found, based on said allegations and the evidence, that she was in a confused and crippled condition, and Appellant was well aware thereof, and therefore, she was entitled to greater protection than the ordinary traveler.

**APPELLEE'S ANSWER TO APPELLANT'S
ARGUMENTS**

1. Appellant contends that "There was no substantial evidence of an abnormal condition of Appellee, within the knowledge of Appellant, requiring it to take extraordinary precautions for her safety." In support of this contention Appellant cites several cases in an attempt to establish a rule whereby the consideration of evidence introduced by Appellant at the trial regarding Appellee's confused condition would be excluded from consideration merely by virtue of the fact that Appellee denied taking certain medicine.

Then Appellant, by ignoring all the evidence introduced, showed Appellee to have been confused, and by ignoring what was obvious to any person observing Appellee during the course of the trial—the Appellee's age, eccentricity, ignorance, and inexperience,—tries to point out that the only evidence establishing a state of confusion is negated by Appellee's statement that she did not take certain medicine.

In apparent support of said rule, Appellant cites several cases taken mainly from an annotation in 80 A. L. R. 625. Reading the text of some of the cases cited will show that what seems to be the rule favored by the annotator is not always the rule established by the cases cited, or the rule to be adduced from the whole of the fragmentary texts that are included in Appellant's brief. One of the leading cases cited in this annotation is *Hill vs. West End Street R. Co.*, 33 N. E. 582 (cited and quoted on page 11 of Appellant's

Brief). Reading this case will show that it establishes a rule diametrically opposed to that rule Appellant is trying to establish. Quoting at length from *Hill vs. West End Street R. Co.*, supra, we find the following language:

“There is no sound reason why the familiar doctrine that a party may contradict, though not impeach, his own witnesses, should not, if the circumstances are consistent with honesty and good faith, be applied when the party is himself the witness; nor, under the same circumstances, is there any reason why, he may not rely on the testimony of witnesses called by the adverse party * * *.

“Even when witnesses are found to have *deliberately testified falsely* in some *material* particular, we are *not* required to reject the whole of their uncorroborated testimony, but may credit such portions of it as they deem worthy of belief.”

In this case, as in the instant one, plaintiff testified in such a manner as to contradict the witnesses of the other side, but it was held proper for the court to use the testimony of the opposing witness to support plaintiff's case.

It was stated to like effect in *Larson Co. vs. Wrigley Co.*, 253 Fed. 914 (cited at page 12 of Appellant's Brief):

“Undoubtedly a litigant has no cause for complaint if the court accepts his solemn and sworn admissions in pleadings and testimony as true. *But we must reject* the contention that his adversary *has the right to compel the court to do so.*”

The general principles of a hard and fast rule cannot be drawn to cover all cases, as stated in the annotation in 80 A. L. R. 626, a part of which comment is quoted on page 12 of Appellant's Brief:

“A search for a general principle deducible from the foregoing cases does not yield satisfactory results. The attempt of some courts to draw an analogy between the statements of parties on the witness stand and judicial admissions contained in pleading and agreements of counsel is not entirely convincing * * *.”

The editor then quotes a part of the comment from *Hill vs. West End Street R. Co.* (supra), and goes on to set down certain standards. One of these standards is as follows:

“Was the party at the time when the occurrence about which he testified took place, and when he testified, in full possession of his mental faculties?”

The reported case, and the one on which 80 A. L. R. 619, is built, is *Kanopka vs. Kanopka*, 113 Conn. 30, 154 Atl. 144, 80 A. L. R. 619, which establishes a rule contrary to that contended for by Appellants. The annotator in commenting on that case has stated:

“Also in the reported case, *Kanopka vs. Kanopka*, ante 619, the court says that, unless it amounts to such a stipulation or waiver as to have the force of a judicial admission, the testimony of a party to a fact is ordinarily no more conclusive on him than the evidence given by any other witness; and it is the duty of the court or jury to determine the fact, not alone from the testimony given by the party, but from all the evidence in the case. It was also observed that under the circumstances *there was no basis for the defendant's claim* that the testimony of the plaintiff should be taken to have the effect of an express waiver or judicial admission by which she was expressly bound, and that the trial court was thereby legally compelled to find the fact from her confused, uncertain, and in some respects, contradictory evidence, and was

thereby precluded from considering the testimony of other witnesses and deciding the case in accordance with the actual facts as they might appear from all the evidence produced."

It will be readily seen that even under the cases cited by Appellant there would be an exception to this rule, if said rule can be said to exist, in a case such as this. The age and eccentricity of Appellee would excuse a misstatement, if such was made. If the court in its discretion saw fit to credit part of the confusion to medicine alleged to have been taken, the trial court was certainly justified in so doing when we consider the condition of the Appellee both at the time of the accident and at the time of the trial. The natural suspicions of the ignorant and uneducated at a trial may lead to a blanket denial of apparently unimportant facts; but it would be unjust for the Appellant corporation in this case and its learned counsel to grasp at this mistake of ignorance to excuse themselves from their own breach of duty.

But regardless of whether or not such a rule could be established in other jurisdictions, the matter is conclusively established in the instant case by the case of *Cox vs. Jones*, 138 Ore. 327, 5 Pac. (2d) 102. This case, establishing the rule of *lex fori* of the instant case, is binding on the court. In that case a rule was clearly enunciated that testimony by plaintiff which is contrary to testimony of witnesses for defendant will not preclude plaintiff from relying upon the testimony of the defendant's witnesses.

In *Cox vs. Jones*, *supra*, the court cited with approval

from the case of *Wiley vs. Rutland R. Co.*, 86 Vt. 504, 86 Atl. 808. It was contended that:

“* * * her own testimony in this respect, being as to a matter within her own knowledge, was in the nature of a judicial admission and therefore, as against her in this case, of conclusive effect. But this is overlooking the distinctive characteristics of judicial admission made by a party, or his attorney, in court, on the trial of a cause. Such admissions are formal acts done for the purpose of dispensing with the production of evidence by the opposing party of some fact claimed by the latter to be true, and are of conclusive effect, unless relieved against in the discretion of the court. The statement here claimed by the defendant to be conclusive against the plaintiff, constituted a part of her testimony as a witness on the trial of the cause. Considered as a statement against her interest, it was not an admission, distinct and formal in character, nor was it made for the purpose of dispensing with the formal proof of any fact at the trial. It was not therefore in the nature of a judicial admission, having conclusive effect in law. It has been held by this court that admissions made by a party in giving testimony as a witness on the trial of a cause, are not controlling against him, as a matter of law, when shown by the opposing party on a subsequent trial of the same case. *LaFlam vs. Missiquoi Pulp Co.*, 74 Vt. 125, 52 Atl. 526. *Neither are they, being informal, conclusive in law on the trial at which the party gives the testimony.* *Matthews vs. Stroy*, 54 Ind. 417; *Shepard vs. St. Louis Transit Co.*, 189 Mo. 362, 87 S. W. 1007; *Zander vs. Transit Co.*, 206 Mo. 445, 103 S. W. 1006, etc.”

Thus, there is established a law of the Forum by the Supreme Court of Oregon; that an admission of plaintiff in testimony at trial is not conclusive against her when contradicted by other evidence.

This being a matter of procedure, the Federal Court, under the rules of conflict of laws, is bound to follow the law of the state in which it is sitting, to-wit: that of the State of Oregon. cf. 11 Am. Jur. 251.

54 Am. Jur. 981: "If by the conflict of laws rule of the state in which the Federal Court is sitting the ultimate question is regarded as procedural and therefore determinable by the law of the forum state, the Federal Court must apply the state law of the forum."

54 Am. Jur. 983: "It has been held that the question of whether evidence sufficient to support some of the counts of the complaint is enough to support a general verdict for the plaintiff despite the insufficiency of the evidence to sustain the other counts is one of practice or procedure, upon which the Federal Courts are bound to follow the State rule, even where such rule is contrary to an express holding of the United States Supreme Court."

We again call the Court's attention (and this is most important) that this question of taking or not taking the medicine is only a small and indeterminate part of the evidence and testimony establishing Appellee's confusion and inability to properly care for herself; however, under the rule as it must be applied by the trial court, the trial court could have believed with propriety that Appellee did actually take the medicine as Appellant's witnesses insisted, and that her condition was impaired by its effects.

See testimony of E. L. Deering, Esther Deering, page 130 through 135.

See testimony of L. Rainey, page 140 through 152.

See testimony of Laurine K. Smith at page 175 through 178.

See testimony of B. A. Paisley, page 154 through 167.

Again we emphasize we are not relying upon the mere fact that there is evidence that Appellee was under the influence of a drug. Her confusion is more strongly established by her peculiarities of habit, as evidenced at trial; by her dress, speech, luggage (her violin case, R. 157), and her mannerisms, plainly those of an elderly person requiring special help. Further, her proclaimed lack of traveling experience and her reluctance to use an upper berth certainly gave a warning to, and placed a burden on the Pullman Company to instruct her as to the use of the berth and to see that she was safely inside and that the buttons were properly fastened.

The cases cited by Appellant regarding drunkards are not in point. In those cases the intoxicated person does not ask for help. Here we have plaintiff strenuously stating to Appellant's servants that she needed help. They could not fail to notice her confusion, indeed they admitted it, and they must have heard her protests; but the Pullman porter sloughed off her protests of ignorance with a silent and lazy indifference as to her safety. (R. 58.) He admits that a fuss was made (R. 146), but states that he doesn't remember anything about it. (R. 152.)

The high degree of care owed to passengers is well established. Admittedly the standard required for the protection of an elderly and confused woman who loudly asks for protection, requires that she at least be instructed as to her safety. In her confusion and excitement she deserved verbal instruction and physical help. She got neither. See *Pierce vs. Northern Pacific Ry.*, 127 Ore. 462; 62 A. L. R. 644.

Unless the trial court erred as a matter of law, the appellate court is bound to accept its finding. As to the facts of the case the trial court's decision is binding. The trial court heard all the testimony and more important, the manner in which it was given, and could best tell what type of woman plaintiff was and whether her allegations of age and inexperience were honestly made. Certainly there was sufficient evidence on which to legally base the trial court's decision. In fact, under the circumstances the trial court could hardly have found otherwise.

2. Appellant in this argument attempts to question whether this negligence is the proximate cause of the injury. In this as in the above matter, the trial court's decision is binding upon the Appellate court unless it would be manifestly impossible for defendant's negligence to be the proximate cause of the injury.

If Appellant is seriously relying on this contention, let it be stated that the reason for buttoning curtains is to prevent the imminent danger of being thrown out of the berth. That is what happened to Appellee and that is why it happened, nothing intervened.

The Appellant attempts to contend that plaintiff attempted to leave the berth. Appellant's own evidence shows that earlier that night the conductor had to push plaintiff's foot back inside the open curtain and he failed to fasten it thereafter. (R. 161.) That alone would negative Appellant's contention and fortify the trial court's decision. It is obvious that the Court felt that if her leg would work itself outside the curtain by the movement of

the train, she not only could but did fall out. Why did the Conductor fail to awaken her and tell her to fasten the curtain, or fasten the curtain himself?

But supposing she did attempt to leave the berth, and *there is no evidence establishing such an attempt and we do not admit it*, would it not be true that the callous indifference of Appellant's servants to Appellee's proclamation of ignorance as above set out, and their failure to instruct her as to the use of the upper berth, establish sufficient grounds under such circumstances. Appellee definitely does not recall her fall. The testimony is clear in that regard. If she were attempting to leave the berth, there should have been evidence to that effect.

3. Appellant attempts to show that there is contributory negligence on the part of plaintiff as a matter of law. In this, too, the trial court's finding is binding on the Appellate court. The answer to this argument can be found in reading our answer to arguments 1 and 2 of Appellant's argument. It can be summed up as follows: her confusion and condition made her unable to provide for her own safety any further than she did by protesting and in asking for instruction.

4. The question of a motion to dismiss if raised here in other than a perfunctory manner is disposed of by the foregoing arguments.

5. The Appellant contends that there was no issue at the trial of whether Appellee's condition was so abnormal as to require Appellant to fasten the inside buttons. There is no question but that the complaint and pre-trial order

put in issue the fact of plaintiff's age and inexperience. The obligation to use a higher degree of care toward plaintiff than the ordinary traveler, was one of the main issues of this action. The Court found that the obligation existed and was impressed by the evidence of both Appellee and the several witnesses of Appellant, that her age and inexperience resulted in her absolute helplessness and confusion.

This was the issue and from what Appellee's counsel could learn from such an aged, confused and ignorant client, there were no curtains on the berth at all. The issue was raised in the alternative that either there were no curtains on the berth, or if there were curtains defendant's agents failed to close and fasten the same, or to equip the berth with protective straps or inform plaintiff about the use thereof. See pre-trial order, paragraph 6 (R. 23). Naturally we rely on the rules of civil procedure which permit the court to treat matters that have been submitted at trial as having been pleaded. But such a reliance is not necessary as we feel that the issues were properly raised.

SUMMARY

The Appellate court should be made aware of the fact that Appellee is poor, ignorant and unable to support herself. That the trial was had at great expense to her and included the necessity of taking two depositions in California. This appeal entails still greater expense which Appellee is unable to meet herself. While this has nothing to do with the issues here involved, it does affirm the rule that the findings of fact of a trial court are binding.

We feel that the Honorable Claude McColloch, the trial Judge, was best able to determine whether or not there was liability. He saw and heard all the testimony and observed plaintiff and her obvious inexperience, age, and confusion. His finding is most persuasive even in absence of the fact that this Court is bound to follow it.

We have prosecuted this case under the disability of having a client who, while not incompetent, was unable to be of any real assistance because of this confusion, inexperience, and age. The record speaks for itself, and we feel that the judgment should be sustained and that we receive our costs on this appeal.

Respectfully submitted,

RYAN & PELAY,
T. H. RYAN,
Attorneys for Appellee.

United States Circuit Court of Appeals

For the Ninth Circuit

THE PULLMAN COMPANY, a Corporation,
Appellant,

v.

MAGGIE MAE TEUTSCHMAN,
Appellee.

Upon Appeal from the District Court of the United States
for the District of Oregon.

APPELLANT'S REPLY BRIEF

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No. 11840

United States Circuit Court of Appeals

For the Ninth Circuit

THE PULLMAN COMPANY, a Corporation,
Appellant,

v.

MAGGIE MAE TEUTSCHMAN.
Appellee.

Upon Appeal from the District Court of the United States
for the District of Oregon.

APPELLANT'S REPLY BRIEF

REPLY TO APPELLEE'S STATEMENT OF FACTS

Appellee's brief goes outside the record to bring in many asserted facts which are not properly before the court. There was no evidence that appellee was confused, tired or excited. On the contrary, her testimony was that she "felt wonderful" (R. p. 99). There was no

evidence that appellee was habitually eccentric, or that she was uneducated or ignorant (except on the subject of traveling on sleeping cars); or that she had any "peculiarities of habit" as alleged on page 10 of appellee's brief. There was no evidence that appellee's age, which was 61 at the time of the accident (R. p. 48), in any way handicapped her. There was no evidence that she was poor or unable to support herself, and these assertions, if true, are not relevant to the issues before the court.

REPLY TO APPELLEE'S ARGUMENT

1. We believe appellee's principal arguments may be summarized as follows:

(a) Appellee was old and inexperienced in travel on sleeping cars.

(b) Her actions at the trial revealed that she is eccentric (although there is nothing in the record to bear out this contention) which justified the trial court in finding that she was "confused" at the time of the accident.

(c) Appellant was therefore required to fasten the inside buttons on the curtains of her berth, or instruct her to do so.

(d) Its failure in this regard was the proximate cause of her falling from her berth.

The question is whether these factors were sufficient to require the particular precaution which appellee contends should have been taken, namely, fastening the inside buttons on the curtains. In determining this question it is not proper to ignore, as appellee would do, the fact that fastening the buttons was an unnecessary precaution against an inadvertent fall. The uncontroverted evidence establishes the fact that with the curtains closed it was impossible to fall from the berth. When this fact is recognized it is apparent that such factors as appellee's age, her lameness and her inexperience in travel on sleeping cars could not possibly indicate to appellant the necessity of fastening the inside buttons. Appellee's insistence in dwelling upon such matters merely serves to cloud the real issue, which is whether the other factors mentioned were sufficient to put appellant on notice that appellee was so irresponsible that fastening the buttons was necessary, not to prevent an inadvertent fall, but to restrain appellee physically from the irresponsible or willful act of leaving her berth.

Undoubtedly the trial court is in a more favorable position than an appellate court to judge the credibility of witnesses. But this appeal does not involve a question of credibility. The issue is whether there was any substantial evidence to sustain the findings of the court.

Before the court could find that appellant owed a duty of extraordinary care it was required to find, based upon substantial evidence, that appellee was in such abnormal condition, within appellant's knowledge, as to require such special care. The condition to be determined was not that on the date of trial, but appellee's condition on the date of the accident.

If, as appellee asserts, the trial court was influenced in its decision by appellee's conduct and appearance at the trial (and there is no evidence that such conduct or appearance was unusual or that the court was so influenced), such conduct and appearance 20 months after the accident could not supply the necessity of substantial evidence of her condition at the time of the accident.

Eliminating all of the material supplied by appellee from outside the record, the only evidence of an unusual condition of appellee was (1) her age, (2) her crippled condition, (3) her inexperience in traveling on sleeping cars, (4) a superficial appearance of intoxication, and (5) evidence that she was taking some kind of medicine.

In appellant's opening brief the contention was made that appellee is bound by her testimony that she was in

perfect health before the accident. A large portion of appellee's brief is devoted to argument upon this question. We think counsel for appellee have overlooked the essential point of distinction which we attempted to make clear in our opening brief.

The great weight of authority supports the general proposition that a party is bound by his own testimony and, in order to win a favorable verdict, will not be permitted to assert that his testimony was false. But this does not mean that he may not, in proper circumstances, correct or retract testimony in which he was honestly mistaken. Thus the test whether he will be allowed to repudiate his testimony is whether such course is consistent with honesty and good faith. If his testimony relates to facts peculiarly within his own knowledge and as to which he cannot be mistaken, it is not consistent with honesty and good faith to permit him to repudiate his story. But if his testimony is in the nature of an estimate or opinion as to which he may honestly be mistaken; or if other circumstances are present, such as confusion or misunderstanding, there is no injustice in permitting the court to consider other evidence in the case and determine from all the evidence what the actual facts are.

In *King v. Spencer* (Conn.), 161 A. 103, these distinctions are pointed out with clarity and the case of *Cox v. Jones* (Ore.), 138 Or. 325, 5 P. (2d) 102, relied upon by appellee, is cited as a case falling within the exception relieving a party from an honest mistake.

The case of *Cox v. Jones*, supra, involved an automobile accident wherein the plaintiff admitted that she saw defendant's car approaching at a given estimated speed and about half a block from the intersection. There was other evidence of a contradictory nature. The Oregon court held that in the light of other portions of the record such testimony was not conclusive upon the plaintiff. It is obvious that this case was properly classified by the Connecticut court in *King v. Spencer*, et al, supra, as one involving testimony in the nature of an estimate or opinion as to which the plaintiff might well have been mistaken. There is no indication in this case that the Oregon court intended to repudiate the general rule long followed in this jurisdiction that a party to an action is bound by his testimony. *Murphy v. Panter*, 62 Or. 522, 125 P. 292; *Hoffman v. Employers' Liability Assurance Corporation*, 146 Or. 660, 29 P. (2d) 557; *Nicolai-Neppach v. Smith*, 145 Or. 450, 58 P. (2d) 1016; *Fowler v. Gehrke*, 166 Or. 239, 111 P. (2d) 831.

Appellee urges that the rule is not applicable where a party was not in full possession of his faculties at the time of the occurrence and at the time of the trial. It seems obvious that where these conditions are present it is not inconsistent with honesty and good faith to permit a party to retract his testimony and correct an honest mistake brought about by an abnormal condition. Such was the situation in *Kenopka v. Kenopka* (Conn.), 154 A. 144, 80 A. L. R. 619. However, in the case at bar no such situation prevailed. The fact whether appellee was in good health immediately prior to the accident or whether she was abnormal from any cause was one peculiarly within her knowledge. We are not concerned at this point with whether she was abnormal at the very instant of the accident, but whether at the time of trial she knew the condition of her health immediately prior to the accident. She knew definitely whether she had or had not been taking medicine, and whether she was ill in any degree. In these circumstances, it is not consistent with honesty and good faith for appellee now to repudiate her sworn testimony and urge that she had been taking medicine or that she was not in normal health.

We agree with counsel for appellee that it is not of controlling importance whether appellee had taken

some nembutal. If she did not take this medicine, however, and if she was in good health as she alleges, appellee's theory that she was so "crippled and confused" as to need care amounting to physical restraint is deprived of its last vestige of support. While appellee's age and inexperience in traveling might have been sufficient to require such additional assistance as closing the curtains to prevent an inadvertent fall, there was nothing about her age and inexperience to indicate a requirement of physical restraint.

As we have pointed out in our opening brief, the trial court's findings established that the curtains were fastened to rods at the top and bottom of the berth; and its failure to make a finding concerning the position of the curtains requires acceptance of the testimony that they were closed. The undisputed testimony is that in these circumstances appellee could not have fallen from her berth. It necessarily follows from this that she must have spread the curtains and placed herself in a position where it was possible for her to fall through the small opening. The trial court refrained from finding whether she accidentally fell from the berth in the manner claimed or whether she fell while attempting to get out of the berth. Liability was predicated on the asserted duty to prevent her either from *falling out or getting out* of the berth.

If appellee adheres to the theory that she inadvertently fell in the manner claimed, she is confronted with uncontroverted testimony that with the curtains closed it would have been impossible for her to have so fallen. It is no answer to this to say that she was elderly and inexperienced and should have been warned of the danger because the physical facts establish that there was no danger of an inadvertent fall. If appellee pursues the trial court's reasoning that fastening the buttons on the curtains would have prevented her from getting out of the berth, she is confronted with the fact that there was no substantial evidence of a condition of appellee which would put appellant on notice that physical restraint was necessary. Certainly her age and inexperience and such eccentricity as appellee seeks to infer indicate no necessity for such measures. Neither could appellee's superficial appearance of intoxication, and her taking of medicine possibly indicate to appellant's employees the need for physical restraint.

Appellee's attempt to distinguish the cases cited by appellant on the ground that intoxicated persons do not ask for help overlooks the essential point of inquiry, which is whether the conditions apparent to or conveyed to appellant's employees were such as to notify them that appellee was *helpless* and *irresponsible*. Her state-

ments that she had never before traveled in a sleeping car and her protests against riding in an upper berth could not conceivably serve as notice to appellant's employees that unless she were physically restrained she would attempt to leave the berth. Instead of indicating that she was irresponsible, these protests indicated an acute awareness of the danger of falling from an upper berth unless appropriate measures were taken for her safety. The measures which were taken, namely, the closing of the curtains, were appropriate and adequate to guard against an inadvertent fall which might be anticipated because of appellee's age and inexperience.

2. Appellee has failed to make any adequate answer to appellant's argument concerning proximate cause. Appellee's assertion that the reason for fastening the inside buttons on the curtains is to prevent "the imminent danger of being thrown out of the berth" is not supported by any evidence in the record. Indeed, the evidence establishes beyond dispute that with the curtains closed, even though unbuttoned, it is impossible for a passenger to fall or be thrown from his berth.

If, as appellee argues, the trial court believed that the movement of the train had caused appellee to fall from the berth, it is strange that the court did not so find. The court's finding that fastening the buttons would

have prevented appellee either from getting out or falling out of the berth demonstrates conclusively that the court felt it unnecessary to determine whether or not the appellee had attempted to leave the berth. This was clearly error since the fastening of the buttons would not have been effectual to restrain appellee from attempting to leave her berth.

Appellee argues that if she did attempt to leave her berth, the failure of appellant to warn and instruct her as to the use of the upper berth would render it liable. It should be sufficient answer to point out that there was no issue and no finding by the court of a failure to warn appellee of the danger in leaving the berth or that there was a duty to so warn her. The reason for the lack of such finding is obvious. There is no duty to warn a person of an obvious danger.

3. In answer to appellant's argument that the trial court was without authority to find liability based upon an asserted obligation to prevent appellee from getting out of her berth, appellee argues that the complaint and pre-trial order put in issue the fact of appellee's age and inexperience. This is not denied. But there was no issue that she was so abnormal as to require physical restraint as a precaution against irresponsible or willful acts. There is a wide gap between an issue of age and inex-

perience requiring instructions and precautions against inadvertent injury, and an issue of a condition requiring protective measures against intentional or irresponsible acts. The latter contention was not made at the trial and is asserted by appellee for the first time on this appeal. Under any concept of justice and fair play appellant should have been given notice that there was such a contention and afforded an opportunity to meet the issue with evidence.

While we have not replied in detail to every argument made in appellee's brief, we believe those matters which we have not commented upon are adequately covered in appellant's opening brief.

It is therefore respectfully submitted that the judgment should be reversed.

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572
No. 11840

United States Circuit Court of Appeals

For the Ninth Circuit

THE PULLMAN COMPANY, a Corporation,
Appellant,

v.

MAGGIE MAE TEUTSCHMAN,
Appellee.

Upon Appeal from the District Court of the United States
for the District of Oregon.

PETITION FOR REHEARING

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No. 11840

United States Circuit Court of Appeals

For the Ninth Circuit

THE PULLMAN COMPANY, a Corporation,
Appellant,

v.

MAGGIE MAE TEUTSCHMAN,
Appellee.

Upon Appeal from the District Court of the United States
for the District of Oregon.

PETITION FOR REHEARING

THE PULLMAN COMPANY, appellant herein, respectfully petitions this court for a rehearing in this case, and in support of its petition represents and shows to the court as follows:

The opinion of this court is predicated upon the assumption that the District Court found appellee had inadvertently fallen from her berth. The District Court, however, did not so find. The issue at the trial was whether the fall occurred inadvertently, as ap-

pellee claimed, or while she was crawling from the berth, as appellant claimed. It was the trial court's view that it was unnecessary to decide which was the correct version and therefore it did not pass upon the question or make a finding in regard thereto. Its finding was that had appellant seen to it that the curtains were fastened, this would have kept appellee from "either falling out or getting out of said upper berth." (Record 33)

Since the trial court did not pass on this question, it must be assumed that appellee fell while attempting to get out of her berth. The validity of the trial court's findings, therefore, should be tested on this appeal by inquiring whether there was any substantial evidence that appellant had knowledge of a condition rendering it likely that appellee would attempt to *get out* of her berth and, if so, whether fastening the perpendicular buttons was an appropriate measure to prevent her from so doing.

It may be assumed the evidence was sufficient to establish a duty to take appropriate precautions against

an inadvertent fall; but the evidence and findings concerning the position of the curtains and the manner in which they were affixed to the berth establishes to a moral certainty the fact that the precautions taken were adequate to prevent such a fall and that the accident could have happened only because appellee was attempting to crawl from her berth. The decision in this case is, therefore, of considerable importance to carriers because of its implication that appellant was under a duty to take measures amounting to physical restraint. Moreover, the decision appears to impose an extraordinary duty upon appellant by requiring it to fasten buttons which are designed for use by passengers and are difficult, if not impossible, to fasten from outside the berth.

It is earnestly submitted that the facts commented upon by this court as within appellant's knowledge were insufficient to put it on notice that appellee would try to get out of her berth; and that the measures which the court suggests should have been taken were not reasonably required and, in any event, would have been ineffectual to prevent appellee from getting out of her berth.

WHEREFORE, appellant respectfully prays this court for an order granting a rehearing in this case.

Respectfully submitted,

M. B. STRAYER,
HART, SPENCER, McCULLOCH &
ROCKWOOD,
Attorneys for Appellant.

I HEREBY CERTIFY that in my judgment the foregoing petition for rehearing is well founded and that it is not interposed for delay.

M. B. STRAYER,
Of Counsel for Appellant.

No. 11841

United States
Circuit Court of Appeals
For the Ninth Circuit

see vol. 25/5

ED DE BON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

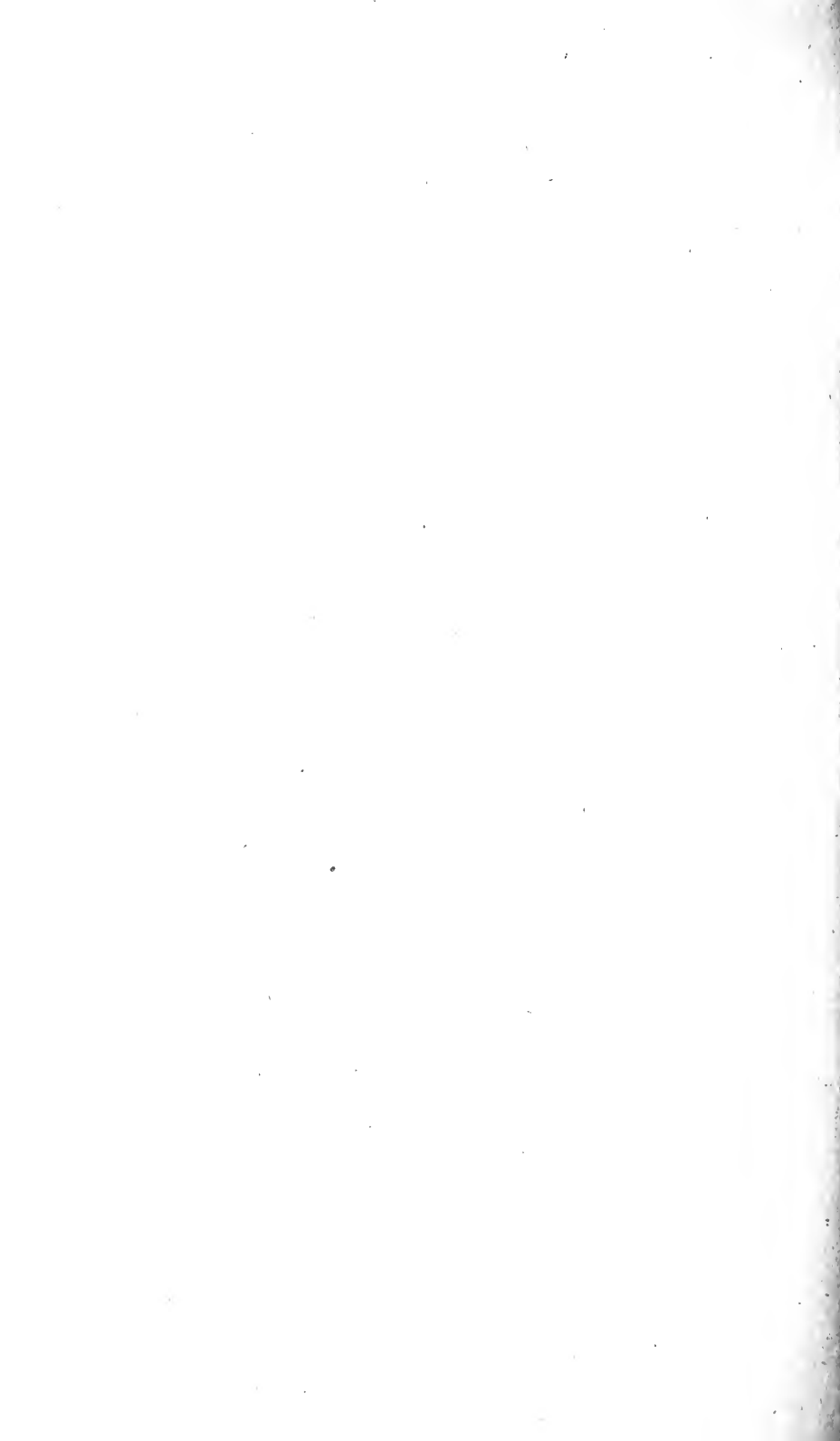
Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

MAY 21 1948

PAUL P. O'BRIEN,
CLERK



No. 11841

United States
Circuit Court of Appeals
For the Ninth Circuit

ED DE BON,

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Transcript of Record

Upon Appeal from the District Court of the United States
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorney for Defendant and Appellant.

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Northern District of California.

Post Office Building,
San Francisco, California.

Attorney for Plaintiff and Appellee.

In the District Court of the United States for the
Northern District of California, Southern Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

ED DE BON, OSCAR CSAKI and
JOHN STEPHEN HILDEBRAND,
Defendants.

INDICTMENT

Viol. Title 18 U. S. C. A. 88 and Title 18 U. S. C. A.
80, Conspiracy and Fraud against Government
Illegal purchase of automobiles from W. S. A.

First Count
(Title 18 U. S. C. A. 88)

The Grand Jury charges:

(1) That at all times herein mentioned, the War Assets Corporation, now the War Assets Administration, was and is a Department and Agency of the United States of America having authority to dispose of certain surplus war property, including trucks, automobiles and other automotive vehicles, and various other property belonging to the United States, the said Department and Agency being hereinafter sometimes referred to as "War Assets Corporation" and sometimes as "War Assets Administration."

(2) That at all times herein mentioned, defendant, Ed De Bon, was the owner and proprietor of the De Bon Motor Company, with its principal place of business in the City of Eureka, County of Humboldt, State of California. [2*]

(3) That at all times herein mentioned, defendant, Oscar Csaki, was a resident of the City and County of San Francisco, State of California.

(4) That at all times herein mentioned, defendant, John Stephen Hildebrand, was a resident of the City and County of San Francisco, State of California.

(5) That beginning in the month of March, 1946, and continuously thereafter until the date of the filing of this indictment, in the City and County of San Francisco, State of California, within the Southern Division of the Northern District of California, and within the jurisdiction of this Court, the said Ed De Bon, Oscar Csaki, and John Stephen Hildebrand (hereinafter called "said defendants") did unlawfully, wilfully and knowingly conspire, combine, confederate and agree together, to commit offenses against the United States of America, to wit, to defraud the United States in violation of Title 18 U. S. C. A. Section 80.

(6) That the object of said conspiracy was knowingly and wilfully to make and cause to be made, present and cause to be presented, false and fraudulent applications by Veterans of World War

* Page numbering appearing at foot of page of original certified Transcript of Record.

If for the purchase of surplus war materials from the War Assets Administration, succeeding the War Assets Corporation, the said defendants knowing then and there that the said applications were false, fraudulent and misleading, and knowing that said applications were in a matter within the jurisdiction of the said War Assets Administration. The intent and design of the said defendants and the said co-conspirators was to obtain for the use and benefit of said defendants war surplus property through [3] priority certificates available only to veterans of World War II for the purpose of securing such surplus property, to wit, various kinds of trucks, automobiles and other automotive vehicles; and, notwithstanding a specific agreement with the War Assets Administration that any such War surplus property so secured was not being purchased for the purpose of resale, did, in fact, at all times, intend that title to the property should be secured for the use of the defendant, Ed De Bon, who was then and there not legally entitled to purchase the said war surplus property.

(7) In furtherance of said conspiracy, and during the existence thereof, the following overt acts were committed:

(a) On or about March 27, 1946, in the City and County of San Francisco, State of California, at the Office of the War Assets Administration, defendants, Oscar Csaki and John Stephen Hildebrand, jointly prepared a certain document known as "Veteran's Application for Surplus Property," intending the same for filing with the War Assets Administration.

(b) On or about March 27, 1946, in the City and County of San Francisco, State of California, the defendant, John Stephen Hildebrand, made certain entries on a document know as "Veteran's Application for Surplus Property."

(c) On or about March 27, 1946, in the City and County of San Francisco, State of California, the defendant, Oscar Csaki, presented a document known as "Veteran's Application for Surplus Property" to the War Assets Administration, knowing that certain statements therein were false and fraudulent. [4]

(d) On or about July 8, 1946, in the City and County of San Francisco, State of California, the defendant, Ed De Bon, solicited the defendant, John Stephen Hildebrand, to fraudulently procure and exercise a veteran's priority for the purchase of a certain Chevrolet truck being offered for sale by the War Assets Administration.

(e) On or about July 8, 1946, in the City and County of San Francisco, State of California, the defendant, John Stephen Hildebrand, executed a mail order request for the purchase of surplus property from the War Assets Administration in the name of Oscar Csaki.

(f) On or about July 9, 1946, in the City and County of San Francisco, State of California, the defendant, Ed De Bon, paid to the War Assets Administration the sum of \$1,125.96, more or less, for a Chevrolet truck sold to defendant Oscar Csaki on the same date by the War Assets Administration.

(g) On or about July 9, 1946, in the City and County of San Francisco, State of California, the defendant, Oscar Csaki, made a certification that he was purchasing a certain Chevrolet truck from the War Assets Administration, in accordance with War Assets Administration regulations.

(h) On or about July 9, 1946, in the City and County of San Francisco, State of California, the defendant, Oscar Csaki transferred the title to the Chevrolet truck, hereinbefore mentioned, to Ed De Bon. [5]

(i) On or about July 8, 1946, in the City and County of San Francisco, State of California, the defendant, Ed De Bon, solicited the defendant, John Stephen Hildebrand, to exercise certain Veteran's priorities for the purchase of certain White trucks which were to be offered for sale by the War Assets Administration on July 12, 1946.

(j) On or about July 8, 1946, in the City and County of San Francisco, State of California, the defendant, John Stephen Hildebrand, executed a mail order request for the purchase of surplus property from the War Assets Administration in the name of defendant Oscar Csaki.

(k) On or about July 24, 1946, in the City and County of San Francisco, State of California, the defendant, Ed De Bon, paid to the War Assets Administration the sum of \$10,887.00, in full payment of three White van trucks sold to the defendant Oscar Csaki on the same date by the War Assets Administration.

(l) On or about July 9, 1946, in the City and County of San Francisco, State of California, the defendant Ed De Bon paid to defendant John Stephen Hildebrand the sum of \$50.00 for procuring and exercising a Veteran's priority in purchasing a Chevrolet truck from the War Assets Administration.

(m) On or about July 9, 1946, in the City and County of San Francisco, State of California, the defendant, John Stephen Hildebrand, paid the defendant, Oscar Csaki, a portion of the \$50.00 he had received from the defendant, Ed De Bon. [6]

(n) On or about July 24, 1946, at the City and County of San Francisco, State of California, the defendant, Ed De Bon, paid to defendant, John Stephen Hildebrand, the sum of \$400.00 for procuring and exercising Veteran's priorities in purchasing three White van trucks sold to the defendant, Oscar Csaki, on the same date by the War Assets Administration.

(o) On or about July 24, 1946, in the City and County of San Francisco, State of California, the defendant, John Stephen Hildebrand, paid to the defendant, Oscar Csaki \$120.00 more or less, of the \$400.00 he had received from defendant, Ed De Bon.

(p) On or about July 24, 1946, in the City and County of San Francisco, State of California, defendant, Oscar Csaki, (pursuant to prior agreement with the defendant, Ed De Bon) transferred title to said three White van trucks, hereinbefore mentioned, to defendant Ed De Bon.

Second Count
(Title 18 U. S. C. A. 80)

The Grand Jury further charges:

That on or about July 8, 1946, the said defendants in the City and County of San Francisco, State of California, and within the jurisdiction of this Court, did knowingly and wilfully make and cause to be made, false, fraudulent and misleading statements and misrepresentations, and did conceal and cover up by scheme and device a material fact in a matter within the jurisdiction of a Department and Agency of the United States, to wit, the War Assets Administration, in that the said defendants did cause to be executed a mail order request for the purchase of surplus property, to wit, the purchase of a Chevrolet truck purported, to be [7] for the use and benefit of a veteran of World War II, one Oscar Csaki, when in truth and fact it was the intention of the defendants to purchase the Chevrolet truck for the use and benefit of the defendant, Ed De Bon, who was then and there not legally entitled to purchase said property.

Count Three
(Title 18 U. S. C. A. 80)

The Grand Jury further charges:

That on or about the 8th day of July, 1946, the said defendants, in the City and County of San Francisco, State of California, and within the jurisdiction of this Court, did knowingly and wilfully make and cause to be made false, fraudulent and misleading

statements and representations, and did conceal and cover up by scheme and device a material fact in a matter within the jurisdiction of a Department and Agency of the United States, to wit, the War Assets Administration, in that the said defendants did cause to be executed a mail order request for the purchase of surplus property, to wit, the purchase of one or more White van trucks, purported to be for the use and benefit of a veteran of World War II, one Oscar Csaki, when in truth and in fact it was the intention of the defendants to purchase said one or more White van trucks for the use and benefit of the defendant, Ed De Bon, who was not then and there legally entitled to purchase said property.

A true Bill

PERRY T. CUMBERSON,
Foreman.

/s/ FRANK J. HENNESSY,
United States Attorney.

Approved as to Form,
R. C. McM

Bail: \$500, Csaki; \$1,000, Hildebrand; \$2,500,
De Bon.

[Endorsed]: Filed June 11, 1947.

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 19th day of June, in the year of Our Lord one thousand nine hundred and forty-seven.

Present: The Honorable George B. Harris,
District Judge.

[Title of Cause.]

Minute Order

ARRAIGNMENT

This case came on regularly this day for arraignment of the defendants Ed De Bon, Oscar Csaki and John Stephen Hildebrand. Defendant John Stephen Hildebrand was not present. Defendants Ed De Bon and Oscar Csaki were present in proper person and with their respective counsel: Herbert Pothier, Esq., for Ed De Bon; and Chauncey Tramutolo, Esq., for Oscar Csaki. E. H. Henes, Esq., Assistant United States Attorney, was present on behalf of the United States.

On motion of Mr. Henes, defendants Ed De Bon and Oscar Csaki were called for arraignment. Said defendants were informed of the return of the Indictment by the United States Grand Jury, and asked if they were the persons, among others, named therein and upon their answer that they were, and that their true names were as charged, thereupon counsel for

defendants waived reading in full of Indictment, and the substance of the charge was stated to defendants.

Mr. Tramutolo advised that defendant Oscar Csaki had heretofore [9] received copy of Indictment. Copy of Indictment was then handed to defendant Ed De Bon. Both defendants stated that they understood the charge against them.

At the request of counsel for both parties, it is ordered that this case be continued to July 11, 1947, for entry of pleas of defendants Ed De Bon and Oscar Csaki.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 11th day of July, in the year of Our Lord one thousand nine hundred and forty-seven.

Present: The Honorable George B. Harris,
District Judge.

[Title of Cause.]

Minute Order

PLEA OF "NOT GUILTY" ENTERED BY DEFENDANT ED DE BON; ETC.

This case came on regularly this day for entry of pleas of the defendants who were present in proper person and with their respective counsel: Herbert Pothier, Esq., for Oscar Csaki; Chauncey Tramutolo,

Esq., for Ed De Bon; and Jos. C. Haughy, Esq., for John Stephen Hildebrand. Edgar R. Bonsall, Esq., Assistant United States Attorney, was present on behalf of the United States.

The defendants were called to plead. Defendant Ed De Bon pleaded "Not Guilty" to the Indictment filed herein and requested trial by jury.

* * * * *

After hearing the attorneys, it is ordered that this case be continued to July 29, 1947, for jury trial as to defendant Ed De Bon. [11]

* * * * *

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 30th day of July, in the year of Our Lord one thousand nine hundred and forty-seven.

Present: The Honorable George B. Harris,
District Judge.

[Title of Cause.]

Minute Order

MINUTES OF TRIAL; MOTION FOR AC-
QUITTAL DENIED; MOTION FOR DI-
RECTED VERDICT DENIED

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. John Stephen Hildebrand resumed his testimony on behalf of the United

States. Oscar Csaki was sworn and testified on behalf of the United States. Mr. Bonsall introduced in evidence and filed U. S. Exhibits Nos. 1, 2, 3, 4, 6, 7, 8, 9, and 10 heretofore marked for identification. Mr. Bonsall introduced in evidence and filed U. S. Exhibits Nos. 16, 17, 18, and 19. Thereupon the United States rested.

In the absence of the jury, Mr. Tramutolo made a motion for judgment of acquittal on behalf of defendant Ed De Bon as to all Counts of the Indictment, which motion, after hearing Mr. Tramutolo and Mr. Bonsall, was ordered denied. Upon the [12] return of the jury into Court, Ed De Bon, Patrick John Kelly and Dr. James B. Brumback were sworn and testified on behalf of the defendant. Defendant then rested. Wm. B. Dillon was sworn and testified, in rebuttal, on behalf of the United States. Thereupon the evidence was closed.

In the absence of the jury, Mr. Tramutolo made a motion for a directed verdict of not guilty, which motion was ordered denied.

The hour of adjournment having arrived, the Court, after admonishing the jury, Ordered that the further trial of this case be continued to July 31, 1947, at 10 a. m.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 31st day of July, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable George B. Harris,
District Judge.

[Title of Cause.]

Minute Order

MINUTES OF TRIAL, VERDICT, MOTION IN
ARREST OF JUDGMENT DENIED

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. After arguments by the attorneys and the instructions of the Court to the jury, the jury retired at 2:25 p.m. to deliberate upon its verdict. At 4:10 p.m. the jury returned into Court and received further instructions from the Court. At 4:32 p.m. the jury again retired to further deliberate upon its verdict.

At 6:00 p.m. the Court ordered that the United States Marshal and Crier take the jury to dinner. At 7:40 p.m. the jury was returned to the jury room and continued its deliberation. At 9:13 p.m. the jury returned into Court and upon being asked if it had agreed upon a verdict, replied in the affirmative and

returned the following verdict which was ordered filed and recorded, viz: [14]

“We, the Jury, find as to the defendant at the bar as follows: Guilty as to the First Count of the Indictment, Not Guilty as to the Second Count of the Indictment, Guilty as to the Third Count of the Indictment.

“MARSHALL A. BALDWIN,

“Foreman.”

The jurors upon being asked if said verdict as recorded was their verdict, each juror replied that it was. Ordered that the jury be discharged from further consideration of this case and from attendance upon the Court until notified.

Mr. Tramutolo made a motion in arrest of judgment, which motion was ordered denied.

Mr. Tramutolo requested that imposition of sentence herein be stayed until September 2, 1947, which motion was ordered granted.

On motion of Mr. Tramutolo and with consent of Mr. Bonsall, it is Ordered that the defendant be and he is hereby allowed to remain at liberty on the same bond as heretofore posted pending imposition of sentence. [15]

District Court of the United States, Northern District of California, Southern Division, First Division

No. 30881-H

THE UNITED STATES OF AMERICA

vs.

ED DE BON

VERDICT

We, the Jury, find as to the defendant at the bar, as follows:

Guilty as to the first count of the indictment.

Not Guilty as to the second count of the indictment.

Guilty as to the third count of the indictment.

MARSHALL A. BALDWIN,
Foreman.

[Endorsed]: Filed July 31, 1947. [16]

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

The defendant, Ed De Bon, moves the Court to arrest the judgment for the following reason:

That the indictment does not state facts sufficient to constitute an offense against the United States.

/s/ CHAUNCEY TRAMUTOLO,
Attorney for Defendant.

Service of copy of above motion is hereby admitted this 5th day of August, 1947.

FRANK J. HENNESSY,
Per T.S.,
U. S. District Attorney for
Plaintiff.

[Endorsed]: Filed Aug. 5, 1947. [17]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

The defendant, Ed De Bon, moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's motion for acquittal made at the conclusion of the evidence offered the Government.

2. The Court erred in denying defendant's motion for acquittal made at the conclusion of all of the evidence.

3. The verdict is contrary to the weight of evidence.

4. The verdict is not supported by substantial evidence.

5. The Court erred in admitting the testimony of the witness, William Dillon.

6. The Court erred in sustaining objections to questions addressed to the defendant, Ed De Bon.

7. The Court erred in charging the jury and in refusing to charge the jury as requested.

8. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

The attorney for the Government stated in his argument to the jury that the defendant was guilty not only of one conspiracy, but that he was guilty of many conspiracies to which attorney for the de-

fendant objected and also made a motion to strike, which though granted had a prejudicial effect upon defendant, Ed De Bon.

/s/ CHAUNCEY TRAMUTOLO,
Attorney for Defendant.

Service of copy of above motion is hereby admitted this 5th day of August, 1947.

FRANK J. HENNESSY,
Per T.S.,

United States District Attorney, Attorney for
Plaintiff.

[Endorsed]: Filed Aug. 5, 1947. [18]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 12th day of September, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable George B. Harris,
District Judge.

[Title of Cause.]

Minute Order

MOTION IN ARREST OF JUDGMENT AND
MOTION FOR NEW TRIAL ORDERED
DENIED

In this case the motion of defendant Ed De Bon in arrest of judgment and motion for new trial hav-

ing been heretofore submitted to the Court, and due consideration having been thereon had, It Is Ordered that each of the said motions be, and the same is hereby, denied. [19]

District Court of the United States for the Northern
District of California, Southern Division

No. 30881-H

UNITED STATES OF AMERICA

vs.

ED DE BON

JUDGMENT AND COMMITMENT

On this 26th day of September, 1947, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of Guilty of the offense of Viol. of Title 18 U.S.C.A. Sec. 88 (Ct. 1), deft. did, in San Francisco, Calif., beginning in March, 1946, and thereafter until June 11, 1947, conspire to commit offenses against the United States of America, and Viol. of Title 18 USCA, Sec. 80 (Ct. 2), deft. did, on or about July 6, 1946, in San Francisco, Calif., make and cause to be made fraudulent statements in order to purchase surplus property, as charged Cts. 1 & 3 of the Indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to

the contrary being shown or appearing to the Court;

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) Months on Count One of the Indictment.

It Is Further Ordered that the sentence of imprisonment imposed on said defendant be suspended and that he be placed on Probation for a period of Two (2) Years, and that he pay a fine to the United States of America in the sum of Two Thousand Five Hundred Dollars (\$2500.00) on Count One of the Indictment, and that he pay a fine to the United States of America in the sum of Two Thousand Five Hundred Dollars (\$2500.00) on Count Three of the Indictment.

It Is Further Ordered that the sentences imposed on said defendant on Counts One & Three of the Indictment run Consecutively, making a total fine in the sum of Five Thousand Dollars (\$5,000.00).

It Is Further Ordered that said defendant report to said Probation Officer as often and in such manner as directed and further comply with all terms and regulations prescribed by said Probation Officer, during the probationary period.

Defendant found Not Guilty as to Count Two of the Indictment.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and

that the copy serve as the commitment of the defendant.

GEORGE B. HARRIS,
United States District Judge.

Examined by:

EDGAR R. BONSALE,
Asst. U. S. Attorney.

The Court recommends commitment to: a County Jail.

Filed and entered this 26th day of September, 1947.

C. W. CALBREATH,
Clerk.

By EDWARD A. MITCHELL,
Deputy Clerk. [20]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Ed De Bon, 2000 Broadway, Eureka, California.

Name and address of appellant's attorney: Chauncey Tramutolo, Alexander Building, 155 Montgomery Street, San Francisco, California.

Offense: Indictment contained three counts, the first charging appellant conspired with others to make a false application to purchase surplus war materials from the War Assets Administration, in violation of Title 18 USCA, sec. 88; the second charging he jointly with others misrepresented a material fact to the War Assets Administration in

executing a mail order request for the purchase of a Chevrolet truck, in violation of Title 18 USCA, sec. 80; and the third charging he jointly with others misrepresented a material fact to the War Assets Administration in executing a mail order request for the purchase of one or more White van trucks, in violation of Title 18 USCA, Sec. 80;

Concise statement of judgment or order, giving date, and any sentence. On July 31, 1947, the jury returned its verdict finding appellant guilty on Count One and Count Three of the indictment; on September 12, 1947, the court made and entered its orders denying appellant's motions in arrest of judgment and for a new trial; and on September 26, 1947, the court made and entered its judgment of sentence, sentencing appellant to six months in the County Jail on Count One but suspending sentence and placing him on probation for two years and fining him \$2,500 on said Count One and fining him \$2,500 on said Count Three, and ordering said judgment of sentence and fines to run consecutively.

Name of institution where now confined, if not on bail: [21] None. Appellant was admitted to and is on bail and the execution of judgment of sentence and fines on September 26, 1947, was stayed to October 6, 1947, by order of court.

I, Ed De Bon, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the above-stated judgment of conviction, sentence and fines, order denying my motion in arrest of judgment and order

denying my motion for a new trial and from the whole thereof on questions of law and of fact.

Dated: October 2, 1947.

/s/ CHAUNCEY TRAMUTOLO,

Attorney for Appellant.

Received Copy Oct. 2, 1947.

EDGAR R. BONSALL,

Assist. U. S. Atty.

[Endorsed]: Filed Oct. 2, 1947. [22]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

(Under Rule 29 R. Crim. P. and Rule 75 R Civ. P.)

For the contents of the record on appeal herein the appellant hereby designates for inclusion the complete record and all the proceedings and evidence in the action together with all the instructions to the jury proposed by the parties to be given and those actually given to the jury.

Dated: October 3, 1947.

/s/ CHAUNCEY TRAMUTOLO,

Attorney for Appellant.

Receipt of a copy of the above Designation is hereby admitted this 3rd day of October, 1947.

FRANK J. HENNESSY,

U. S. Attorney.

By EDGAR R. BONSALL,

Assistant U. S. Attorney. Attorneys for Plaintiff
(Appellee).

[Endorsed]: Filed Oct. 3, 1947. [23]

[Title of District Court and Cause.]

STIPULATION AND ORDER EXTENDING
TIME FOR FILING RECORD ON APPEAL
AND DOCKETING CAUSE IN CIRCUIT
COURT

(Rule 39(c), R. Crim. Pro.)

It is stipulated between the parties hereto that the time within which the defendant (appellant) Ed De Bon shall file his record and docket said cause on appeal in the United States Circuit Court of Appeals be extended to and including the 29th day of December, 1947.

Dated: November 10, 1947.

FRANK J. HENNESSY,

U. S. Attorney.

By EDGAR R. BONSTALL,

Assistant U. S. Attorney, Attorneys for Plaintiff
(Appellee).

CHAUNCEY TRAMUTOLO &

W. COLLINS,

/s/ CHAUNCEY TRAMUTOLO,

Attorney for Defendant

(Appellant).

So Ordered for Cause Shown, November 10, 1947.

GEORGE B. HARRIS,

United States District Judge.

[Endorsed]: Filed Nov. 10, 1947. [24]

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 30881-H
(USDC No. 30881-H)

ED DE BON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STIPULATION AND ORDER EXTENDING
TIME FOR FILING RECORD ON APPEAL
AND DOCKETING CAUSE IN CIRCUIT
COURT

It is stipulated between the parties hereto that the time within which the appellant (defendant below), Ed De Bon, shall file his record and docket said cause on appeal in this Court be extended to and including the 28th day of January, 1948.

Dated: December 26, 1947.

/s/ FRANK J. HENNESSY,
U. S. Attorney.

By,
Assistant U. S. Attorney,
Attorneys for Appellee.
/s/ CHAUNCEY TRAMUTOLO,
Attorney for Appellant.

Upon reading and filing the above stipulation and good cause appearing therefore it is ordered that

the time of appellant Ed De Bon to file his record and docket said cause on appeal in this Court be extended to and including January 28, 1948.

Dated: December 26, 1947.

FRANCIS A. GARRECHT,
United States Circuit Judge.

A True Copy, Attest.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed Dec. 26, 1947. [25]

In the United States District Court for the
Northern District of California, Southern
Division

No. 30881-H—(Crim.)

ED DE BON,

Appellant (Defendant),

vs.

UNITED STATES OF AMERICA,

Appellee (Plaintiff).

STIPULATION DESIGNATING PART OF
PROCEEDING TO BE INCLUDED IN
RECORD ON APPEAL AND PRAECIPE

To the Clerk:

Please take notice that it is hereby stipulated that the record on appeal herein shall contain the reporter's transcript of the opening statement made

to the jury by plaintiff's counsel at the trial on July 31, 1947, and his transcript of the proceedings had on September 26, 1947, relating to the sentencing and passing of judgment on appellant.

Dated: January 12, 1948.

/s/ CHAUNCEY TRAMUTOLO,

Attorney for Appellant.

FRANK J. HENNESSY,

U. S. Attorney.

By EDGAR R. BONSALL,

Assistant U. S. Attorney, Attorneys for Appellee,
Plaintiff.

[Endorsed]: Filed Jan. 12, 1948. [26]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 26 pages, numbered from 1 to 26, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of The United States of America, Plaintiff, vs. Ed De Bon, Defendant, No. 30881 H, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$8.40 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 26th day of January, A.D. 1948.

[Seal] C. W. CALBREATH,
Clerk.

/s/ M. E. VAN BUREN,
Deputy Clerk.

In the Southern Division of the United States
District Court for the Northern District of
California

Before: Hon. George B. Harris,
Judge.

No. 30,881-H

UNITED STATES OF AMERICA,

vs. Plaintiff,

ED DE BON,

Defendant.

REPORTER'S TRANSCRIPT

Wednesday, July 30, 1947.

JOHN STEVEN HILDEBRAND

called as a witness by the Government; sworn.

The Clerk: Will you state your full name to the court and jury?

The Witness: John Steven Hildebrand.

(Testimony of John Steven Hildebrand.)

The Clerk: John Steven Hildebrand?

The Witness: Yes, sir.

Direct Examination

By Mr. Bonsall:

Q. Where do you live, Mr. Hildebrand?

A. 51 Leo Street, San Francisco.

Q. Are you one of the persons who was indicted in this case?

A. Yes, sir, I am.

Q. Were you ever employed by the War Assets Administration?

A. Yes, sir, I was.

Q. Between what dates were you employed by them?

A. From August 14, 1945 to March 31, 1946.

Q. In what capacity were you employed?

A. I was employed as an inventory clerk, which covered many specific duties, which I was in one section, automotive section, for the War Assets Administration, Veterans' Service Division.

Q. Do you know this defendant, De Bon?

A. Yes, sir, I do.

Q. Will you point him out in the courtroom?

Mr. Tramutolo: Stand up, Mr. De Bon. [1*]

A. Yes, sir, that is Mr. De Bon.

Mr. Bonsall: It is stipulated this is Mr. De Bon; he has identified Mr. De Bon.

Q. Do you know this other person who was indicted with you, Mr. Csaki?

A. Yes, sir, I do.

* Page numbering appearing at foot of page of Reporter's certified Transcript of Record.

(Testimony of John Steven Hildebrand.)

Q. Did you have any dealings with Mr. Csaki regarding a purchase of a Chevrolet truck from the War Assets Administration? A. Yes, sir.

Q. When did you first contact him regarding the purchase of that Chevrolet truck?

A. I believe it was the night after the units were showed to me, I mean on a brochure.

Q. But before you had this conversation regarding the truck you had a conversation regarding the use of certain priorities didn't you?

A. With whom, sir?

Q. With Mr. Csaki. A. Yes, sir, I did.

Q. When did you have that conversation?

The Court: Mr. Csaki or Mr. De Bon?

Mr. Bonsall: Csaki at this time.

The Court: All right.

Mr. Bonsall: When did you have this conversation with him? [2]

A. It was the evening that I had put in for that Chevrolet truck that you are talking about, sir.

Q. Do you know what data that was?

A. Well——

The Court: Refresh his recollection if you wish.

A. ——around July.

Q. (By Mr. Bonsall): Yes, I show you Veteran's Application for surplus property, and ask you if you have ever seen that before, Government's Exhibit No. 14.

A. Yes, sir, I have, that's right.

Q. When did you first see that?

A. When Mr. Csaki—I asked Mr. Csaki to come down to fill that supplemental form out.

(Testimony of John Steven Hildebrand.)

Q. Well, did you have a conversation regarding the use of his priorities before this form was filled in? A. Yes, sir, I told Mr. Csaki——

Q. When did you have that conversation with him? A. I don't recall, sir, the actual date.

Q. Well, was it a few days before this was filled in, or a week, or a month?

A. Must have been a few months before, sir.

Q. A few months before?

A. I believe that was made out in March—no, I don't recall the date that that was filled out, sir.

Q. This was filled out March 27, 1946. Now, didn't you have [3] a conversation with Mr. Csaki shortly before that was filled in regarding his priorities? A. Yes, sir.

Mr. Tramutolo: I object, your Honor, to the form of the question.

The Court: I sustain the objection.

Mr. Tramutolo: I move that the answer be stricken out.

The Court: Motion granted.

Q. (By Mr. Bonsall): All right. Shortly before this form, Government's Exhibit 14, was filled in, did you have a conversation with Mr. Csaki?

Mr. Tramutolo: Just a minute. I object to the same question, your Honor, upon the ground that is stating something not in evidence. I have no objection to asking when did the conversation occur.

The Court: When, if it did occur, did he have the conversation?

(Testimony of John Steven Hildebrand.)

Q. (By Mr. Bonsall): When did you have the conversation with Mr. Csaki, the first conversation?

A. In regard to this form, sir?

Q. Yes, in regard to the property in this form.

A. Well, Mr. Csaki had a previous priority—I mean an application for a previous priority for surplus property, but he only had just a few items there. Every veteran was allowed \$25,000 in property to be certified for, and he had such a few items that [4] I asked him if he wanted to make out a supplemental to that, getting the rest of the surplus property that was due him.

Q. And what did he say to that?

A. Well, he told me at the time that he didn't need anything more, that things were so darn hard to get out of War Assets that there was no need even in trying to make application any more for anything else, so I told him, "Well, why don't you just take advantage of the veteran's rights?" And which he consented finally to my asking him to do so.

Q. Did he tell you that he didn't have any use for this property any more?

A. He did, sir.

Q. He did tell you he didn't need this property; now, you testify this form purports to be signed by Oscar Csaki. Was it signed by him?

A. Yes, sir.

Q. Did you prepare any of this form?

A. Yes, sir, I did.

Q. Will you identify to the court which parts of this form you prepared, and to the jury?

(Testimony of John Steven Hildebrand.)

A. Do I have to show it to them, sir?

Q. No, just tell them which items you prepared, reading the question and answer you filled in, if you will.

A. I prepared the applicant's name in printing. I printed his [5] name in, his address, and city, and zone, and county and state, and I—and description of enterprise, I printed that in, "Pick up and delivery of scrap iron to different disposal yards; pick up of mattresses and pillows from commercial ships for disinfecting purposes; handling of all types of waste materials and products claimed junk or unserviceable;" and item No. 9, "What experience, training, and/or education have you had which you believe assures the success of this enterprise?" I wrote there, printed, "Father's business, to be taken in as partner."

Q. Where did you get that information from to insert in that application?

A. I made that, myself. I mean that was my own——

Q. Did Mr. Csaki give you that information?

A. No, sir, he did not.

Q. Now, I notice here a number of articles for which Mr. Csaki is purportedly applying. Did you fill those articles in? A. Yes, sir, I did.

Q. Where did you get the information to insert in that particular section?

A. Well, where I got this information was that I was familiar with the necessary procedure of units

(Testimony of John Steven Hildebrand.)

that were available that were readily turned over, and I suggested these units, and I put them down on this sheet here where it says, "Description and list items in order of preference." [6]

Q. What I am getting at, did Mr. Csaki give you that information as to the articles set forth there, or not? A. No, sir.

Q. Do you know who filled in the rest of this form on the first page, Government's Exhibit No. 14? A. You mean the bottom part, sir?

Q. No, the rest of it, the other parts that were not filled in by you; do you know who filled it in?

A. Yes, sir, I believe Mr. Csaki did, the trade name and address, I believe that is his.

Q. Do you know when it was filled in?

A. I believe it was that day, sir, that Mr. Csaki came down.

Q. Did you ask Mr. Csaki to come down and meet you some place?

A. Yes, sir, I asked him to come down and meet me at 1540 Market, whenever he——

Q. When was it you asked him to come down and meet you?

A. It was on the date that was signed, sir.

Q. And he did come down? A. Yes, sir.

Q. And he did sign it? A. Yes, sir.

Q. And what happened to this form?

A. It was presented to the certification section, and I don't recall who certified the form, and pink slip priorities were issued upon the request of that form. [7]

(Testimony of John Steven Hildebrand.)

Q. A pink slip similar to this one, Government's Exhibit No. 6 for Identification, similar to this one?

A. Yes, sir.

Q. And how many of those slips were issued at that time, do you know, or can you tell by reference to this form?

A. Yes, sir. They were issued one in lieu of each item requested on this form, here.

Q. Were those priority slips delivered to Mr. Csaki or to you?

A. They were given to Mr. Csaki, and Mr. Csaki turned them over to me.

Q. What, if anything, did you do with these priority certificates?

A. I just threw them in my glove compartment in my car and left them there.

Q. What did you intend to do with them?

Mr. Tramutolo: Just a moment.

The Court: Sustain the objection.

Mr. Bonsall: All right, all right, all right.

Q. For what purpose did you secure these certificates?

A. Well, I wasn't eligible at all to procure any surplus property from War Assets during the time I was employed by them. Well, I had in mind that if I had the priorities maybe some day Mr. Csaki and I would maybe go into business and we might be able to use them on any of the items that were made available at that time to veterans; and the veterans at that time weren't buying too much of

(Testimony of John Steven Hildebrand.)

the items, because War Assets had set such a high price on a lot of items that were used, but the items that were available were some of the stuff that none of the veterans wanted and were left over after the sale, and shall I go on to say that was the items I had purchased?

Q. Maybe I am mistaken. I understood you to say Mr. Csaki told you he had no further use for this property. A. That's right.

Mr. Tramutolo: Just a moment. I object to that because he said they made the application because this man was not eligible and they intended to go into business.

The Court: Earlier in his testimony he said that Csaki said he did not have any immediate use.

Q. (By Mr. Bonsall): Do you know if Mr. Csaki's priorities that you secured on the 27th of March were ever executed or not?

A. All of them, sir?

Q. Any of them. A. Yes, sir, they were.

Q. Do you happen to know which ones were executed?

A. One for a jeep, some ambulances——

Mr. Tramutolo: Pardon me——

A. (Continuing): ——and the White trucks.

Mr. Tramutolo: I ask him to speak up a little louder.

The Court: Speak up.

The Witness: A jeep, some ambulances, and three White trucks, and the Chevrolet truck, sir.

(Testimony of John Steven Hildebrand.)

Q. (By Mr. Bonsall): Did you ever hear from Mr. Csaki regarding the exercise of his priorities for this Chevrolet truck and the three White trucks?

A. Did I ever hear from him, sir?

Q. Yes. A. Yes, sir.

Q. When did you hear from him regarding the exercise of those priorities?

A. When the slips were mailed from War Assets to Mr. Csaki, claiming that he was awarded the trucks that were listed on a mail order request that was submitted by myself to War Assets. The papers that were sent to him were the papers notifying him that the property was available to him and that he was to make payment to the War Assets office.

Mr. Bonsall: Just a moment.

The Court: We will take a short recess, ladies and gentlemen of the jury. May I again admonish you not to discuss the case among yourselves, nor to form or express any opinion on the case until it is finally submitted to you? We will take a short recess. I would like to discuss some matters with counsel.

(Thereupon the jury withdrew from the courtroom and the following proceedings were had:)

The Court: I think Mr. Mitchell has indicated to both counsel that in view of the fact that I am in these courts alone [10] this week calling three calendars, that I desire every expedition in this

(Testimony of John Steven Hildebrand.)

case. I want to commend you thus far on the stipulations you have entered into so far, and if there are any other matters that you can stipulate, without waiving any rights, it seems to me that this is a comparatively simple case.

Mr. Tramutolo: We make no denial of the purchases. The cashier's checks were paid for; money was paid to this man, here, Hildebrand. I don't know whether anything was paid to Csaki, but if it develops, I am will to stipulate.

Mr. Bonsall: Of course, I have to put in the conversation between the co-conspirators, your Honor.

The Court: We agree with that. It is quite all right.

Now, on your instructions, Mr. Tramutolo, if you will have them ready tomorrow morning at ten o'clock.

Mr. Tramutolo: I will have them ready tomorrow at ten o'clock.

The Court: We will take a five-minute recess.

(Recess.)

The Clerk: The witness on the stand is John Steven Hildebrand, heretofore sworn.

Mr. Bonsall: I would like to strike out that last question, your Honor.

The Court: Yes, sir.

Q. (By Mr. Bonsall): Mr. Hildebrand, you said you knew this defendant De Bon.

A. Yes, sir. [11]

(Testimony of John Steven Hildebrand.)

Q. When did you first meet him?

A. I met Mr. De Bon in War Assets around about the latter part of June, I believe it was. I am not positive.

The Court: And the year?

The Witness: In '46, sir.

Q. (By Mr. Bonsall): What address?

A. 30 Van Ness, sir.

Q. How did you come to meet him there?

A. I had business up there, myself, up at 30 Van Ness, and I was talking to someone up there, and we were just introduced. He, I believe was sitting at one of the desks, and we were just introduced, and we got talking about different sales, and the like, and I imagine he knew——

Q. Not what you imagined. What did he say and what did you say?

A. Well, we got talking about some units on a sale that was pending, War Assets. and talking about some of the units that were there for sale, and whether I was putting in for any, myself, and I told him that I hadn't thought of putting for any, that I wasn't interested much in the sale, and I believe it came around that he wanted me to get him some units that were in that sale, if I could exercise a priority.

Q. May I interrupt here? When Mr. De Bon met you did he have any catalogs or other documents in his possession?

A. I believe they were on the desk right there. Whether they were his, I don't recall exactly, but there were some brochures there. [12]

(Testimony of John Steven Hildebrand.)

Q. Do you recall what documents were on the desk?

A. There was a brochure, a catalog of the sale that was to be—that was pending for that week. There was weekly sales and monthly sales, and I believe it was a veterans' sale for that week.

Q. I show you this brochure which is marked Government's Exhibit 11 and ask you if that looks like the brochure that was on the desk or being examined by Mr.——

A. Yes, sir, it is.

Q. And was that brochure opened by either of you?

A. Well, it was opened—that I couldn't say whether it was opened by either one of us, but I was shown what units he was interested in.

Q. What units did he show you he was interested in, if you know? Do you know the nature of the article?

A. This one here. I don't know whether it is—I believe this is the Chevrolet trucks in this one.

Q. That is correct, and what conversation did you have regarding the Chevrolet truck with Mr. De Bon?

A. Well, Mr. De Bon—well, there were units—I mean that were to be transformed, because they were aerial gunnery trucks, and aerial gunnery trucks are units that aren't used commercially, but they were an item that a lot of dealers probably wanted because they knew very well that a lot of the veterans wouldn't have too much use for an aerial gunnery truck, because, say, it [13] would

(Testimony of John Steven Hildebrand.)

take too much to reconvert, so they were items probably that are left over after the sale, so I was asked if I could possibly get any of these units. I told him I would try, so I went down to War Assets across the street from 30 Van Ness, at 1540 Market, and I went over there and submitted an application which was a mail order request for the unit in question, and there was one unit that was left over after the sale that none of the veterans wanted. That was the unit that was awarded me there. There was some discussion there about the units, and, well, they made me an award of this unit, this aerial gunnery truck that Mr. De Bon wanted.

Q. Was there anything said about the use of priorities in connection with the purchase of that?

Mr. Tramutolo: Just a moment, if your Honor please. I am going to object to any leading questions.

Mr. Bonsall: I will withdraw it.

The Court: Objection sustained.

Q. (By Mr. Bonsall): Was Csaki's priority used in the purchase of that——

A. Aerial gunnery truck.

Q. ——aerial gunnery truck, if you know.

A. Yes, sir.

Q. Do you happen to know if Mr. De Bon——

A. Pardon me.

Q. ——had any priorities? [14]

A. No, sir, not that I know of, he never had any.

Q. Specifically, do you happen to know if Mr. De Bon had any veterans' priorities?

(Testimony of John Steven Hildebrand.)

Mr. Tramutolo: We will stipulate he had no veterans' priorities, your Honor.

A. No, sir.

Q. (By Mr. Bonsall): After this White truck was picked up by Mr. De Bon——

Mr. Tramutolo: Just a moment. I don't know that he made any testimony about a White truck. He was talking about a Chevrolet gunnery truck.

The Court: There is no such testimony in the record.

Q. (By Mr. Bonsall): After this Chevrolet truck was picked out by Mr. De Bon, what did you do, if anything?

A. I explained to him what the order was, and that the necessary papers were made out, and that he was to pay War Assets for the Unit that was sold to me on Oscar's priority for Mr. De Bon.

Q. I show you this form, purporting to be a mail order request for surplus property, dated July 8, 1946, and to be signed by Oscar Csaki, J.D.H., I think it is, and ask you if you have ever seen that before. This is Government's Exhibit No. 1 For Identification.

A. Yes, sir, that is my signature, and my initials after the name, after the signature, after Csaki's signature.

Q. Did Csaki sign it, or did you sign it? [15]

A. I signed it.

Q. Did Mr. Csaki tell you to sign it?

A. I believed I discussed the matter with Mr. Csaki afterwards.

(Testimony of John Steven Hildebrand.)

Q. After it was signed? A. Yes, sir.

Q. And when did you discuss this with Mr. Csaki?

A. I believe it was that same night.

Q. At what place?

A. I believe it was at my own home, sir.

Q. Who was present, if anyone?

A. No one that I can remember, sir.

Q. Tell me what conversation you had with Mr. Csaki at the time you told him you had signed this without his knowledge?

Mr. Tramutolo: Your Honor, just a moment. I object to that on the ground there is absolutely at the present moment no tie-in or identification of Mr. De Bon with any wrongdoing. This is an attempt to discuss a conversation not in the presence of Mr. De Bon, and up to the present moment I am frank to say I do not see that there is any connection with Mr. De Bon in the whole transaction.

The Court: The earlier conversation with De Bon that this witness testified he had with respect to surplus commodities is the only identification thus far that De Bon has had with any of these alleged transactions.

Mr. Tramutolo: That is right. [16]

Mr. Bonsall: Of course, in a conspiracy case we can't do it all at once. We have to do it piecemeal.

The Court: What was the last question?

(The reporter read the last question.)

The Court: You may answer.

(Testimony of John Steven Hildebrand.)

A. Well, I explained to Mr. Csaki what I had done, and he asked me if it was at all legal, and I told him, well, I thought that it was at the time, and that I didn't think there was anything wrong, or nothing would come of it, and he was aware of the transaction that took place.

Q. (By Mr. Bonsall): Now, I wish you would repeat the conversation that you had with Mr. Csaki as near as you can, instead of the results of the conversation.

Mr. Tramutolo: I submit, your Honor, that is cross-examination. He asked him the direct question, and the answer is in the record.

The Court: It probably is. Did you give the full purport of the conversation you had with Mr. Csaki at the time you made the explanation of the use of his name in connection with that paper you hold in your hand?

The Witness: I told Mr. Csaki I had gotten this unit for Mr. De Bon, and I believe it was at this time I asked him if he wouldn't come down and sign some papers to clear this unit, and he told me that he would, and he would be down, I believe it was, the next day, if I am not mistaken, that I had to get the necessary [17] papers submitted to War Assets for clarification of the units.

Q. (By Mr. Bonsall): Did Mr. Csaki make any objection to entering into——

A. Yes, he made——

Mr. Tramutolo: I object to that question—just a moment—on the ground it is leading and suggestive. He asked for the entire conversation.

(Testimony of John Steven Hildebrand.)

The Court: It is perhaps leading. What, if anything, did Mr. Csaki say when, as you testified, you made explanation. Did he say anything to you?

The Witness: I told him that I would like to have him come down and sign the necessary papers. Mr. Csaki said he would.

The Court: Did he ask you anything further in explanation of the transaction?

The Witness: Yes, he asked me who I had gotten this for, and I explained to him who I had purchased it for.

The Court: Did you tell him who Mr. De Bon was?

The Witness: Yes, sir, I told him he was a dealer from Eureka, and I had made an acquaintance with him at 30 Van Ness.

Q. Did you discuss with him any purported arrangements you had with De Bon?

The Witness: I believe I told Mr. Csaki he was to give me some money.

The Court: He, De Bon, was to give you some money? [18]

The Witness: For the purchase of the unit.

The Court: What conversation, if any, did you have with De Bon with respect to any money?

The Witness: I believe it was that I was to get either fifty or a hundred dollars for the unit.

The Court: On this transaction?

The Witness: Yes, on this transaction.

The Court: You acquainted Csaki with the full purport of that conversation?

(Testimony of John Steven Hildebrand.)

The Witness: Yes, sir, I did.

The Court: And it was the following day, as you have already testified, that Csaki came down and executed the formal papers?

The Witness: Yes, sir, that's right.

The Court: All right, proceed.

Q. (By Mr. Bonsall): Have you told us everything that Mr. Csaki said regarding this transaction?

A. He was dubious about the whole transaction.

Mr. Tramutolo: Just a minute.

The Court: "Dubious" may go out. State the conversation to the best of your recollection. If you can't recall the conversation, state very frankly that you can't recall it.

The Witness: I can't recall it, sir.

The Court: All right, then you can't recall it.

Q. (By Mr. Bonsall): Did you ever actually get the \$50 from [19] Mr. De Bon?

A. Yes, I did.

Q. When did you get that?

A. After the necessary papers and everything were signed.

Q. Where did you get it?

A. I believe it was outside of 30 Van Ness where I got it.

Q. Who was present?

A. No one that I recall except Mr. De Bon.

Q. Was it in bills or a check?

A. It was cash, sir.

(Testimony of John Steven Hildebrand.)

Q. What kind of cash was it, do you recall?

The Court: Currency or——

Q. (By Mr. Bonsall): Bills, large bills?

A. It was in bills, sir.

Q. What did you do with this money?

Mr. Tramutolo: Now, just a moment. That is immaterial so far as we are concerned. We are making no denial, as I stated, to counsel before, that this man was given money by De Bon. De Bon paid for these trucks direct by check to War Assets.

Mr. Bonsall: Yes, but it is very important that we know what happened to this money.

The Court: You received the \$50 as you testified?

The Witness: Yes, sir.

The Court: What, if anything, did you do with the \$50? [20]

The Witness: I gave Mr. Csaki, I believe, either twenty or twenty-five dollars of it, sir.

Q. (By Mr. Bonsall): When did Mr. De Bon pay for the Chevrolet truck?

Mr. Tramutolo: I submit, if your Honor please, that the best evidence is the document here. I will stipulate whatever date it is. I again reiterate that he did pay.

The Court: Mr. Tramutolo, as I understand the testimony—if I am mistaken, I will appreciate it if you will correct me—the jurors are vitally interested in this phase of the case. Am I to understand that the defendant De Bon paid by cashier's check to War Assets the amount indicated for the purchase of this truck?

(Testimony of John Steven Hildebrand.)

Mr. Tramutolo: Correct, the full amount to the government. Whatever was on the invoice De Bon paid direct to War Assets.

Mr. Bonsall: But I want to show where this \$50 went.

The Court: He has already testified he gave \$25 to Csaki. Have you completed this transaction?

Mr. Bonsall: Yes, I have.

The Court: All right, go to the next transaction.

Q. (By Mr. Bonsall): At the time you discussed the purchase of this Chevrolet truck with Mr. De Bon did you discuss the purchase of any other property?

A. Yes, we did. We discussed——

Q. Just a moment. At the time you had that discussion were [21] there any books or catalogues on sales available? A. Yes, sir, there were.

Q. Were they examined in connection with that discussion of the purchase of any of the property?

A. Yes, sir, they were.

Q. Now, I show you this brochure marked Government's Exhibit 12 in evidence and I ask you if at the time of the discussion of the purchase of other property this brochure was used or one similar to that. A. Yes, sir, it was.

Q. And did Mr. De Bon point out what property or indicate what property in that brochure he would like to obtain?

A. Yes, sir, there was some trucks in here, six-ton Whites.

(Testimony of John Steven Hildebrand.)

Q. Three six-ton Whites?

A. He didn't specifically state how many, sir, just any one six-ton White. [22]

Q. Did he state how many he wanted?

A. As many as he could get, sir.

Q. As many as he could get. Was anything said about paying you in connection with obtaining these trucks?

A. Yes, sir. Mr. De Bon agreed to pay me, I believe it was \$200 a unit for every truck that I could possibly get him.

Q. And were those trucks obtained on Mr. Csaki's priorities? A. Yes, sir, they were.

The Court: Before advancing from this point, could you specify to the best of recollection the date when you had this conversation or understanding with Mr. De Bon concerning the \$200, in point of time?

The Witness: I believe, sir, it was on July 8 when the transaction of the Chevrolet took place. It was on the same date.

The Court: Where did it take place?

The Witness: 30 Van Ness.

The Court: You had a conversation in the office concerning the White trucks?

The Witness: Yes, sir.

The Court: And at that time the defendant in this case, De Bon, agreed to pay you \$200?

The Witness: Yes, sir, your Honor.

The Court: —for every truck you were able to obtain?

(Testimony of John Steven Hildebrand.)

The Witness: Yes, sir. [23]

The Court: All right.

Q. (By Mr. Bonsall): After you had that discussion with Mr. De Bon about the White trucks, did you execute a mail order request for the purchase of such trucks? A. Yes, sir, I did.

Q. I show you this form WAASF29, Government's Exhibit for identification No. 5, dated July 8, 1946, and I ask you if that is the form that you executed for these three White trucks.

A. Yes, sir, that is the form.

Q. I notice that it purports to be signed by Arthur Csaki. Do you know whose signature is in fact on there? A. Yes, sir, that's mine.

Q. When did Mr. Csaki first learn that this form had been executed?

A. It was that night, that same night of the Chevrolet.

Mr. Bonsall: I ask that this be marked Government's exhibit next in evidence.

The Court: So ordered.

The Clerk: The exhibit which is now Government's Exhibit No. 5 for identification is now Government's Exhibit No. 5 in evidence.

(Form WAASF29 marked as Government's Exhibit No. 5 for identification received in evidence.)

Q. (By Mr. Bonsall): Were you ever paid by Mr. De Bon for obtaining these three trucks? [24]

A. I wasn't paid the full amount, sir, because——

(Testimony of John Steven Hildebrand.)

Q. How much were you paid?

A. Roughly about \$400.

Q. And when were you paid?

A. Around the 26th or 28th of July.

Q. And where?

A. It was outside of 30 Van Ness. We were in his automobile.

Q. And was anything said by Mr. De Bon as to why you were not paid the full amount of \$200 for each of these trucks?

A. Yes, sir. The trucks seemed to be in very poor condition and that they weren't exactly good for his purposes with the condition that they were in, and he figured that the amount of money due me was not worth the—worthy of the trucks, so I wasn't given the right amount of money for the trucks.

Q. By the way, did you ever see any of these trucks, the Chevrolet truck or the three White trucks?

A. No, sir, I did not.

Q. Do you know who paid for the trucks?

A. Yes, sir, Mr. Ed De Bon.

Mr. Bonsall: Just a moment, your Honor.

Q. Oh, yes, one other question regarding this Chevrolet truck and the three White trucks; did you ever have any intention of purchasing them before you talked to Mr. De Bon?

Mr. Tramutolo: Just a moment. That is objected to as being leading and suggestive. What we want is what actually [25] happened.

The Court: Sustained.

Mr. Bonsall: No further questions, your Honor

(Testimony of John Steven Hildebrand.)

Cross-Examination

By Mr. Tramutolo:

Q. Mr. Hildebrand, how old are you, sir?

A. 28, sir.

Q. And what is your present occupation?

A. Service station operator.

Q. Where? A. In Oakland.

Q. That is, you have an oil station?

A. Gasoline and oil, sir.

Q. And I believe you stated you are identified with War Assets from August 1946 until about March 1946, the 31st of March 1946?

A. No, sir. I was employed at War Assets from August 1945 till approximately '46.

Q. To March 31, '46? A. Yes, sir.

Q. You are correct and I am mistaken. When did you first meet Ed De Bon, the defendant in this case, seated right behind me?

A. I don't recollect actually the date, but it was some time in June.

Q. Of 1946? A. Yes, sir.

Q. Had you seen Mr. De Bon at the War Assets many times previous [26] to then?

A. No, sir, I don't recall seeing him up there at any time previous to that time.

Q. Well, in June of 1946 when you first saw Mr. De Bon he was in a public room at 30 Van Ness Avenue, War Assets?

A. Yes, sir. It is a big office, one floor office building there, with numerous amount of office desks segregated into sections.

(Testimony of John Steven Hildebrand.)

Q. And on these various desks were various brochures and documents for sales to occur from time to time? A. Yes, sir, that's right.

Q. And at the time you saw him he was at a desk thumbing through or looking at one of these brochures or several brochures?

A. That I couldn't recall whether it was several or just how many were there.

Q. I believe you testified you helped Mr. Csaki prepare his application.

A. I didn't help Mr. Csaki. I made the application myself in certain parts. Mr. Csaki——

Q. Did you make the—Pardon me, I did not want to stop you.

A. Mr. Csaki just signed his name and filled in his address.

Q. Are you referring to the one signed March 27, 1946, or the one in December, 1945?

A. I am referring to the supplement which was signed, I believe, in March 27, 1946. [27]

Q. Let me show you the one prepared in December of 1945. Did you prepare that or help him prepare or write any portion of that?

A. No, sir, I did not.

Q. Do you know who wrote that?

A. Yes, sir.

Q. Who? A. Mr. Csaki himself.

Q. You notice what it contains on there and what he requested, do you not?

A. Yes, sir, a three-quarter or one-half ton truck.

(Testimony of John Steven Hildebrand.)

Mr. Bonsall: It seems immaterial and not in issue.

Mr. Tramutolo: Oh, yes.

The Court: Overruled. Go ahead.

The Witness: It is a three-quarter or one-half ton truck rack side or CSDP or flatbed GMC Chev, Dodge or Ford, and he has got struck out "one each 5 passenger sedan or 4 door sedan preferred Plymouth, Chevy, or Ford, 1941 or 1942 model," and "2 each standard typewriters preferred Underwood or Remington."

Q. (By Mr. Tramutolo): This is the application filed by Mr. Csaki in December 1945?

A. That is right.

Q. Had you seen this document before?

A. No, sir, I don't recall seeing it before. [28]

Q. Didn't you have access to the documents prepared by veterans in your capacity?

A. No, sir, I did not.

Q. What was your particular work at War Assets?

A. My particular work at War Assets was the automotive section. I handled the veterans' needs that pertained after the sale—after sale of the property that was left over to the veterans, and I also initialed certain documents that went by—went through the sales to the veterans offering them necessary items that they were requesting.

Q. Now, referring to Government's Exhibit 14, in which you stated Mr. Csaki, all he did on this one was to sign his name, in which you had filled in

(Testimony of John Steven Hildebrand.)

all the essential materials or facts as to why he wanted this material, the jeep and the trailer and the pickup truck and the dump truck and three van trucks, the ambulance and what not, this supplemental exhibit or document from which I am now reading——

A. Is that No. 14?

Q. No. 14 is the one you filled out in its entirety?

A. No, sir, I did not fill it out in its entirety.

Q. What information did Mr. Csaki give you on that?

A. "Csaki and Son Salvage Company," and he wrote 1355 Market; in other words, those items 3, 4 and 5.

Q. All right, now——

A. And his own signature. [29]

Q. Yes, and at the time this was filled out——

A. Yes.

Q. ——was there any intention on your part with Mr. Csaki to defraud the government?

Mr. Bonsall: That is objected to as calling for a conclusion.

Mr. Tramutolo: Well, that is what you charge. You charge that in the indictment.

The Court: Overruled.

The Witness: Would you repeat that again, sir?

Mr. Tramutolo: Did you at the time you prepared this supplemental application in which you included many items that were not included in the one filled out by Mr. Csaki in December 1945 intend to defraud the government?

A. No, sir, I did not.

(Testimony of John Steven Hildebrand.)

Q. It was your honest intention, was it not, to get the material mentioned in here and go into business with Mr. Csaki?

A. We had mentioned it once or twice——

Q. That was your reason——

Mr. Bonsall: Let him answer in full.

Q. (By Mr. Tramutolo): Go ahead.

A. ——mentioned it once or twice, but it never materialized because Mr. Csaki figured the property available at that time was too hard to get and there was so much red tape connected with it and veterans weren't getting too much out of it, and he figured we better not even try for it.

Q. When did you come to that conclusion that you were going to abandon efforts to get this property in government Exhibit 14 dated March 27, 1946?

A. I believe it was some spell after that, not very long after that.

Q. What were you doing at the time you met Mr. De Bon? What was your business when you met him in the latter part of June 1946; what business were you in?

A. I was purchasing agent for Mr. Tom P. Mee, the California Farm and Equipment Company at Bakersfield, California.

Q. What was the nature of his business?

A. We were purchasing surplus property through dealership channels.

Q. You were familiar with sales to veterans and others who had priority, thoroughly familiar, were you not?

A. Yes, sir.

(Testimony of John Steven Hildebrand.)

Q. Did Csaki have any knowledge of that?

Mr. Bonsall: That is something probably not in his knowledge.

The Court: Sustain the objection.

Q. (By Mr. Tramutolo): You told Mr. Csaki he had a right to apply for a quantity of material up to \$25,000; you acquainted him with that fact, didn't you? A. Yes, sir.

Q. Were any of these documents I have now shown you prepared [31] by Mr. De Bon?

A. No, sir.

Mr. Bonsall: I will stipulate they were not.

Mr. Tramutolo: Well, you are late with your stipulation. Your stipulation is after he answers.

Q. Now, Mr. Hildebrand, will you tell this court and jury whether or not Mr. De Bon ever suggested that you or anybody else do anything dishonest to obtain property from the government?

Mr. Bonsall: That is objected to as calling for a conclusion.

The Court: Sustained.

Mr. Tramutolo: Your Honor, it is a conspiracy and it is under cross-examination.

Mr. Bonsall: What did he say?

The Court: It does call for a conclusion as to what may be regarded as honest or dishonest.

Q. (By Mr. Tramutolo): Was Mr. De Bon, to your knowledge, Mr. Hildebrand, aware of any dishonest act being done by you or Mr. Csaki?

A. Yes, sir.

Mr. Bonsall: Objected to for the same reason.

(Testimony of John Steven Hildebrand.)

The Court: Perhaps it is subject to the same objection. Will you ask him what, if anything, he did?

Q. (By Mr. Tramutolo): All right, what did Mr. De Bon say to you with respect to obtaining any of these trucks that you have [32] mentioned?

A. He knew I was using Mr. Csaki's priorities, and I told him so.

Q. When? A. Pardon me?

Q. When did you tell him?

A. Before we made application for the units I had to tell him that, because I didn't have any priorities myself that covered any of those units and I told him I was, and he was aware of it.

Q. Did he tell you what to put in any of the documents that were signed and filed with War Assets? A. Of which do you refer to?

Q. Any of the documents, whether the application, the mailing order or the pink slip, or anything to War Assets that gives you title to the property. Did Mr. De Bon make any suggestion as to what should be put into any of those documents?

Mr. Bonsall: You mean the articles he wanted?

A. That's right.

Q. (By Mr. Tramutolo): Outside of the articles? A. Outside of the articles?

Q. Yes. He told you he was interested in trucks.

A. Yes, sir.

Q. Chevrolet trucks. A. Yes, sir.

Q. One Chevrolet or two. [33]

A. There was a numerous amount of Chevrolets in that brochure.

(Testimony of John Steven Hildebrand.)

Q. No, the amount he was interested in, getting as many as he could get. A. Yes.

Q. Do you know how many he got?

A. He got one.

Q. You are sure he didn't get two?

A. He got one other truck that was on my own priority.

Q. On yours? A. That's right.

Q. Then he did get two.

Mr. Bonsall: That is not an issue here.

Mr. Tramutolo: Oh, I see.

Q. Now, with respect to the White trucks that have been mentioned here, the three.

A. Yes, sir.

Q. Outside of indicating that he wanted these trucks, did Mr. De Bon have anything to do with the preparation of any documents that you and Csaki prepared?

A. No, sir, all he told us was which item he wanted.

Q. And so far as you knew, he was entitled to these articles when the veterans did not want them, isn't that correct? A. No, sir.

Mr. Bonsall: I object to that.

The Court: The answer is "No, sir." If you object to it, [34] it may go out. Do you wish it out of the record?

Mr. Bonsall: Yes, your, Honor, all right.

The Court: It may be stricken.

(Testimony of John Steven Hildebrand.)

Q. (By Mr. Tramutolo): Did you have any transaction with De Bon after these truck transactions?

A. No, sir, I only went up to Eureka there to ask for a job.

Q. Did you ever correspond with him?

A. Yes, sir.

Q. And what was the nature of your correspondence? A. It was in reference to a job.

Q. You wanted to work for him?

A. Yes, sir.

Q. In other words you left the company you were working for in Bakersfield. A. Yes, sir.

Q. And Bakersfield was similarly in the market to buy anything from War Assets Mr. De Bon was interested in, isn't that true?

Mr. Bonsall: That is not material to the issues here.

The Court: Sustained. Sustained.

Mr. Tramutolo: Did you ever acquaint Mr. De Bon with any irregularities that transpired or took place between you and Mr. Csaki at any time?

Mr. Bonsall: Well, of course, the way that question is framed it calls for a conclusion. I object to it in that form.

The Court: I will overrule the objection. [35]

The Witness: Is that question still on the floor, sir?

The Court: You may answer it.

The Witness: Would you give it to me again, Mr. Tramutolo?

The Court: Repeat the question.

(Testimony of John Steven Hildebrand.)

Mr. Tramutolo: Does your Honor want it read by the Reporter?

The Court: Yes.

(The Reporter read the last question by Mr. Tramutolo.)

A. Just to the fact that he was aware that the priorities——

Mr. Tramutolo: Just a moment.

Mr. Bonsall: Let him answer.

The Court: Let him answer. Proceed.

The Witness: ——that the priorities that I was using weren't my own. He was aware of that.

Q. (By Mr. Tramutolo:) That the priorities weren't your own? A. Yes, sir.

Q. You did tell him you would have to use veterans' priority?

A. That was the only way we could purchase the surplus property that was offered.

Q. And so far as you knew it, that was the legitimate legal way to do it? A. That is right.

Q. You weren't trying to put anything over on the government or defraud or fool Mr. De Bon, were you?

Mr. Bonsall: That is argumentative, your Honor.

The Court: Sustained. [36]

Q. (By Mr. Tramutolo:) Were you, or did you ever acquaint Mr. De Bon that you were doing anything that was illegal or dishonest in the acquirement of these trucks?

Mr. Bonsall: Well, may it please the Court——

(Testimony of John Steven Hildebrand.)

Mr. Tramutolo: This man is familiar with the entire War Assets procedure.

Mr. Bonsall: What did he do?

Mr. Tramutolo: This is a cross-examination.

The Court: I will allow latitude on cross-examination but I do think the question as framed is objectionable. I will sustain the objection.

Q. (By Mr. Tramutolo:) All right, did you ever tell Mr. De Bon that you had to do anything irregular or illegal and dishonest to get these trucks for him?

A. No, all I told Mr. De Bon was that all that I could do was put in for the units and just hope to get them, that was all.

Q. And you did that, you put in for the units, you applied for them?

A. Yes, at his suggestion.

Q. When you put the application in, what were you told? A. By War Assets?

Q. War Assets or anybody connected with the government for the disposition of these trucks.

A. I wasn't told anything because I put it in as a mail order request, and you could submit that to anyone in War Assets. [37] You could put it through the mail, and whoever gets the unit—I mean, whoever receives the mail distributes it to that unit section and it is opened there.

Q. Do I understand you to say you forged Csaki's name in order to get this equipment?

A. I did not forge Csaki's name. My initials appear on the bottom of that.

(Testimony of John Steven Hildebrand.)

Q. Csaki was entitled to this property?

A. That's right.

Q. And after acquiring it, he disposed of it to Mr. De Bon? A. After he acquired it.

Q. In other words, transfer or bill of sale was given by War Assets to Csaki and then Csaki gave a bill of sale to Mr. De Bon, but first Csaki got the property, didn't he?

A. It had to be issued to him, yes.

Q. That is right. Mr. Hildebrand, you have entered a plea of guilty in this matter, have you not?

A. I have.

Mr. Tramutolo: That's all.

Redirect Examination

By Mr. Bonsall:

Q. One other question. I should have asked it on direct, but I will ask leave to ask it at this time.

Mr. Tramutolo: I have no objection, your Honor.

Q. (By Mr. Bonsall): The \$400 you say you received from Mr. De Bon, what happened to that money; did you keep it or what? [38]

A. No, I gave Mr. Csaki \$125 of it.

Q. You gave Mr. Csaki \$125——

No other questions.

The Court: Mr. Tramutolo?

One question. Who fixed the amount of \$200 for each unit on the White trucks? Did Mr. De Bon fix the amount or did you?

The Witness: I don't recall, sir, which one.

(Testimony of John Steven Hildebrand.)

The Court: Did you have any discussion of the amount, be it \$100 or \$200? It must have been resolved in some fashion. Who fixed it?

The Witness: I believe it was Mr. De Bon told me how much they were worth because I wasn't too familiar with dealer's characteristics as to the amount that should be paid off for each unit, so I imagine he set the figure, because he was the man with the money and I didn't have the money, so I guess it was Mr. De Bon that actually told me how much the units were worth to him.

The Court: Did he indicate to you what you were to do in consideration of the payment by him to you of something like \$200 for each unit?

The Witness: No, sir. I just took it for granted I would have to handle the paper work for him and the necessary steps of having Oscar—I mean Mr. Csaki—sign the necessary papers for him to procure the units.

The Court: Well, without the intervention of Csaki, De Bon [39] could not acquire any or all of these units?

The Witness: That is right, sir.

The Court: Or without the intervention of the veterans' priority, De Bon could not acquire any or all of these units?

The Witness: No, sir, he could not.

The Court: Could you independent of Csaki?

The Witness: Of Csaki?

The Court: Yes.

(Testimony of John Steven Hildebrand.)

The Witness: Yes, sir, but I wasn't certificated for the same items Mr. Csaki was certificated for.

The Court: So it was impossible for you to acquire any or all of the units?

The Witness: At the time War Assets had given me a wrong priority slip.

The Court: Why did you go to work for War Assets?

The Witness: I was to work for them at first in the storage and inspection division.

The Court: At Bakersfield?

The Witness: No, you asked why I worked for War Assets. Well, when I got out of the army I felt that I would like a more secure job, one without unions, because I was always out on a picket line here and there, and I figured I may as well get in government work. I liked the army when I was in it, and government work seemed to be all right that way.

The Court: Did you disclose to Mr. De Bon, the defendant [40] in this case, that you were dividing any of or part of the \$400 or any of the sum with Csaki?

The Witness: I believe he understood it, yes, sir.

The Court: Did you indicate to him the exact amount of \$125?

The Witness: No, sir, I did not indicate the amount.

The Court: But you did tell him you were dividing part of the funds?

The Witness: Yes, sir.

(Testimony of John Steven Hildebrand.)

The Court: Did you indicate that before these transactions had been consummated?

The Witness: I believe it was after, sir.

The Court: After? No further questions.

Mr. Bonsall: No further questions.

Mr. Tramutolo: Just this one question. When did you join War Assets? Did I understand you to say it was after you got out of the service?

The Witness: No, sir, I had another job before I went to War Assets.

Mr. Tramutolo: What was that job?

The Witness: I worked for a frozen food outfit down on Washington Street, Levi & J. Zeddner Frozen Produce.

Mr. Tramutolo: Then from Levi Zeddner you went to War Assets?

The Witness: Yes, sir. [41]

Mr. Tramutolo: That is all.

Mr. Bonsall: No further questions.

The Court: Ladies and gentlemen of the jury, we have reached the 4:00 o'clock hour and accordingly the court will adjourn until tomorrow morning at ten o'clock, and may I again admonish you not to discuss the case among yourselves or permit any person to converse with you on any subject of the trial and not to form or express an opinion thereon until the case is finally submitted to you. We will adjourn until tomorrow morning at ten o'clock.

(Thereupon, at 4:05 p.m., an adjournment was taken until Wednesday, July 30, 1947, at 10:00 o'clock a.m.)

Wednesday, July 30, 1947, 10:00 o'Clock A.M.

The Clerk: United States of America vs. Ed De Bon, on trial.

Mr. Bonsall: Ready, your Honor.

Mr. Tramutolo: Ready.

Mr. Bonsall: Call Oscar Csaki.

Mr. Tramutolo: Mr. Bonsall, may I ask the Court's permission to put Mr. Hildebrand back on the stand for one or two questions?

The Court: May it be stipulated, gentlemen, the jurors are all present in the jury box?

Mr. Tramutolo: I so stipulate.

Mr. Bonsall: So stipulated.

The Clerk: The witness on the stand is John Steven Hildebrand, heretofore sworn.

The Witness: No, the witness is Oscar Csaki.

Mr. Bonsall: My mistake. I called Mr. Csaki and Mr. Tramutolo wants Mr. Hildebrand first.

JOHN STEVEN HILDEBRAND

recalled, previously sworn

Further Cross-Examination

The Clerk: Your name is John Steven Hildebrand?

The Witness: Yes, sir. [43]

The Clerk: Heretofore sworn.

Q. (By Mr. Tramutolo): Mr. Hildebrand, I didn't quite hear yesterday. You were about to explain something to the effect that you had filed an application for goods that you wanted to get, you and

(Testimony of John Steven Hildebrand.)

Mr. Csaki, and that there was some mistake made on your application. Was that the substance of what you testified to yesterday?

Mr. Bonsall: Just a moment. I object. I don't think it is germane to the property here in issue.

Mr. Tramutolo: That I am going to develop.

The Court: I will allow it as a preliminary question.

A. The property I had put in for I could not get, because the partner I had—well, he wasn't my partner, he was the man I was working for—had already made application of his own. Therefore, the War Assets could not allow two veterans in the same organization to file applications; one of us had to drop out. Therefore, I had more applications that I had already used; therefore, I didn't have anything left except maybe a few thousand dollars or so on my—

The Court: When you say a few thousand dollars, you mean the quantum in merchandise rather than—

The Witness: Yes.

The Court: Have in mind, ladies and gentlemen of the jury—If I am incorrect, correct me—the total outside limitation is \$25,000. [44]

The Witness: Yes, sir.

The Court: When you say a few thousand dollars, you mean you might have allocated to you that amount in merchandise?

The Witness: That's right.

The Court: All right.

(Testimony of John Steven Hildebrand.)

The Witness: Therefore, I just didn't feel that I ought to go through with any more of the application, and they were pretty much on the hard side about me getting anything out of it, being that I knew everybody down there, figuring that I might go ahead and say, "Well, how about letting me in on the dope, or something else on any sale," which I didn't do, because I just took everything as it was on sale. That was all I knew, whatever sale was presented down there. That was what I participated in, but as it was I didn't participate in anything but dealers' sales for this fellow I was working for.

Q. (By Mr. Tramutolo): Who were you working for at the time? A. Tom P. Mee.

Q. The man that you testified about in Bakersfield? A. That's right.

Q. And he was, as I believe you testified, buying surplus materials? A. That's right, sir.

Q. Property from War Assets?

A. That's right, sir.

Q. And you were on the lookout for goods he was interested in? [45]

Mr. Bonsall: I don't see how that is material to this issue.

The Court: I think so, counsel. I can see the materiality.

Q. (By Mr. Tramutolo): When you say you didn't go through with the application to get the trucks involved here, it was because you had ex-

(Testimony of John Steven Hildebrand.)

hausted your twenty-five thousand you were entitled to in the way of goods from War Assets, all but \$2000, is that correct?

A. No, I wouldn't say that. I don't recall the exact amount.

Q. Well, approximately how much had you exercised of the \$25,000, just approximate? You don't have to be exact to a dollar, or in cents, Mr. Hildebrand, just the best of your recollection.

A. Just about \$2000.

Q. In other words, you had exhausted or had used up twenty-three thousand, approximately?

A. That's about right.

Q. And the reason you wanted the applications for these trucks to go through Mr. Csaki is that he had not exercised any portion of his twenty-five thousand to which he was entitled, is that right?

A. That's right.

Q. How long had you known Mr. Csaki?

A. I had known Oscar ever since we went to service together January 27, 1941. [46]

Q. You were in the service together?

A. That's right, sir.

Q. In the same organization?

A. That's right.

Q. I see, and were you and Csaki residents of San Francisco or this locality?

A. Yes, sir.

Q. Was your first acquaintance with him when you went in the Army, or had you known him previous to that?

A. The first acquaintance was in the service.

(Testimony of John Steven Hildebrand.)

Q. Did you have any dealings with Mr. Csaki while you were with War Assets or after you left War Assets?

A. No, sir, only your mentioned deal here.

Q. The trucks in this case? A. Yes, sir.

Q. Had you mentioned to Mr. Csaki that you were going to prepare any documents whatsoever using his name?

A. I mentioned to him after I had prepared the documents.

Q. Now, the document that you prepared which you signed Oscar Csaki's name to is merely the order, is it not, to get the goods whenever they may be located?

A. It is a request for War Assets to participate in that particular sale.

Q. What was the document which you had signed? Is that a *requestion* or is that the final document which gives you the goods [47] or enables you to get the goods?

A. No, I could not find any document that had his name written on it on any form from War Assets. That had to be signed by himself. The only thing I could possibly sign would be that mail order request, and I initialed that.

Q. In other words, the mail order request—will you explain—I think you understand it better than I do. I might be misleading you. Personally, I don't want to mislead you or the jury or the court. What is the mail order request? What effect has that when it is signed?

(Testimony of John Steven Hildebrand.)

A. Well, when it is signed and sent in to War Assets it is just a declaration that you are interested in those particular items enumerated, and you can stipulate as to the—if I can have a brochure I can explain something.

Q. Would the document, itself, help you?

A. Pardon me?

Q. Would the documents, themselves, help you, or would the brochure be the best?

A. The brochure would be much better. Is it all right if I show the jury, sir?

The Court: If there is any occasion for it.

The Witness: Well, on the brochures there is an item column, a tag number column—well each one of these item numbers and tag numbers is put down on this mail order request. It is just the items you are interested in in this catalog and that [48] goes on the mail order request, and it is sent in, and you don't know whether you are going to get those items, or not. It is acted upon on a system the War Assets has set up for each one of their sales. It is directed by a person at the head of the auditorium, or wherever the sale may be conducted, and he calls out by case number, which is on the pink slip that the counsel there showed the jury yesterday. that gives you a certain priority. That is where your priority is based, and it is set up so that with that priority number that you have at the top of that pink slip, that is how they give you an order on whatever items you have requested on that mail order request. But if you haven't got a high enough priority number, well, in order words, the numbers are lower,

(Testimony of John Steven Hildebrand.)

the lower the number the greater your priority is, but the higher your number the less priority you have, because the way the veterans have filed, War Assets, was according to case number. That is this number I am explaining to you now, and they presented themselves with their information of what they wanted, and this priority number was given to them at that particular time. Then when they presented that at any of the sales, whatever number they presented to them, whatever item they wanted, they took right down the list the lowest case number, and the lowest case number got the item if more than one veteran wanted the item, but in the case of these units mentioned here—I mean the Chevrolet—that was an after-the-sale unit. The other three [49] were just given to us through the chance that we took on this brochure.

Q. (By Mr. Tramutolo): Let me show you Government's Exhibit, Mr. Hildebrand, No. 5. This is known as the mail order request for surplus property. The signature on that, is that your signature, or Oscar Csaki's?

A. That is my signature.

Q. Your signature, and this is the document you are now talking about, or trying to explain to the jury, War Assets Administration SF 29, the form known as the mail order request for surplus property?

A. Yes, sir.

Q. And this has to do with the three White trucks, or I think it is referred to in the indictment as White trucks; is that correct?

A. That's right.

(Testimony of John Steven Hildebrand.)

Q. Did you also file a similar form for the Chevrolet?

A. Yes, sir, there is another one just like that.

Q. When you filed the form for the Chevrolet—

A. When did I file that?

Q. Yes.

A. That was on the 8th, I believe, of July, if I am not mistaken.

Q. Didn't you have the Chevrolet, or two of them, for quite some time?

A. No, sir. They were offered on that day, I am pretty sure. [50]

Q. Didn't you offer them to other people before you ever knew or ever saw De Bon?

Mr. Bonsall: That is objected to as irrelevant.

The Court: Overruled.

A. I don't recall, sir.

Q. (By Mr. Tramutolo): Would you say you didn't?

A. I don't recall.

Q. Do you know a man by the name of Mr. Murphy, in Oakland?

A. I have heard of Mr. Murphy. I have seen him with Mr. De Bon.

Q. Did you ever offer one or two of these Chevrolets, these trucks, and tell Mr. Murphy you had the trucks in your possession, before you ever talked to Mr. De Bon?

A. Did I tell him?

Q. Yes.

A. Not that I recall, sir.

Q. Would you say that you didn't?

A. I don't recall, sir.

(Testimony of John Steven Hildebrand.)

Q. Would you say that you did not have these trucks and told other people that you had them for more than two months before you ever saw De Bon?

A. I never had any trucks at all, I mean of these Chevrolet trucks.

Q. Didn't you put in an application for one, yourself?

A. Yes, that is right.

Q. And you had that for some time, didn't you?

A. No, I didn't. [51]

Q. When did you acquire that truck?

A. I believe that was on the same day that I acquired the Chevrolet truck, if I am not mistaken. I don't recall exact dates.

Q. Let me ask you again, Mr. Hildebrand, didn't you offer one or two Chevrolet trucks to other people than to Mr. De Bon?

A. No, not that I recall.

Q. Well, now, you add a qualifying word, not that you recall. Would you say that you didn't or that you did?

A. I didn't.

Q. You are positive of that?

A. I am pretty sure, yes, sir.

Q. Are you sure of it?

A. No, I didn't offer it to anyone that I recall.

Q. Then your answer is that you didn't offer it to anyone; that is your answer?

A. That's right.

Q. Have you discussed this case with anybody, Mr. Hildebrand?

A. Not except Oscar, that's all.

Q. You have talked with Oscar about your testimony in this case?

A. No, not exactly, no.

(Testimony of John Steven Hildebrand.)

Q. What was your conversation with Oscar?

A. Well, just about the particulars of the case, that was all.

Q. Well, you went over the facts of this case, didn't you, with [52] him?

A. Well, it is natural. I see the man every day.

Q. That's all I want. You did talk to him and discuss what you were going to testify, and both exchanged your views?

A. No, we didn't. That was something we were going to be truthful about, this whole thing. We wouldn't come right out and say, "You are going to do this and I am going to do that." I want to wipe this thing clean.

Q. There is nothing wrong about it. I am asking if you talked with Mr. Csaki.

A. Yes, I did.

Q. Didn't you discuss the nature of your testimony with him?

A. "The nature of your testimony" takes in a big scope.

Q. I don't want to argue with you. You just answer the questions. If the Government's representative thinks it is not proper he will protect you in that matter. Did you discuss your testimony in this case with Mr. Csaki?

A. Well, to the effect that I was going to tell the truth, yes.

Q. Well, you discussed what your testimony was going to be. I am not saying whether it is the truth, or not. That is for the jury to determine.

(Testimony of John Steven Hildebrand.)

A. Yes, sure, discussed it with him.

Q. Did you discuss your testimony with anyone else? Didn't you discuss it with your lawyer?

A. Yes. [53]

Q. Of course you did. That is natural. Did you discuss it with Mr. Bonsall? A. Yes.

Q. Did you discuss it with Mr. Kennedy?

A. That's right.

Q. Anybody else?

A. No, that's about all I can recall.

Q. Did you discuss it with Mr. Dillon, another member of the FBI, Federal Bureau of Investigation?

A. Dillon? I think there was a Mr. Williams that came over to my station with Mr. Kennedy, if I am not mistaken.

Q. Did you discuss it with Mr. Williams, also?

A. I did not discuss my testimony with Mr. Williams, at all. He was just there present with Mr. Kennedy. Whether I was supposed to discuss with him or not I couldn't say.

Q. But he was present when you were discussing your testimony, isn't that correct?

A. When Mr. Kennedy was giving me my questions, he was there, yes, but it wasn't my testimony.

Mr. Tramutolo: I am going to ask your Honor to admonish him to answer the questions. He is trying to get into an argumentative state. I want to avoid that.

The Court: All right.

(Testimony of John Steven Hildebrand.)

Q. (By Mr. Tramutolo): All I want you to tell the court and jury is what your conversation was, to the best of your recollection. [54] I haven't the right to determine whether it is truthful or untruthful. They determine that. Do you know of anyone else that you discussed this case with outside of the gentlemen I have enumerated? I never took them into confidence on anything.

Q. You have discussed it with your family, your wife?
A. My wife knows it, sure.

Q. Those are all people. Did you discuss it with Mr. De Bon, the defendant in this case?

A. Yes, I believe I did, when he came to my station.

Q. Did your testimony that you discussed with any of the people in the case vary from what it has been here in this trial?
A. No, it did not.

Q. You told them all the same thing?

A. That's right.

Q. Just what you testified before this court and jury?

A. I am pretty sure, yes, sir; to the best of my recollection.

Q. What disposal did you make of the \$23,000 worth of property that you bought from War Assets?

Mr. Bonsall: I object to that as immaterial. It is his own property. The property in issue here is that of Csaki.

The Court: I will allow it.

The Witness: Is the question still——

(Testimony of John Steven Hildebrand.)

Q. (By Mr. Tramutolo): Yes, what disposition did you make of it?

A. Of the \$23,000? [55]

Q. Well, approximately, what you got; you exercised that much credit or that much right to buy. What did you do with the property?

A. It went to Mr. Tom P. Mee.

Q. The man you were working for?

A. That was before we were called to War Assets about our condition that prevailed.

Q. When you exercised the right to buy property as a veteran you resold it to Mr. Mee, is that correct? A. Well——

The Court: Mr. Hildebrand, if you do not understand the question, indicate to counsel or the court. Read the question.

(The reporter read the last question.)

A. I didn't resell it to Mr. Mee. I exercised my own priority on our behalf, because I was paid a salary plus a third commission.

Q. Well, let me follow you. You put in an application as a veteran to get certain property from War Assets? A. Yes. [56]

Q. You put in an application because as a veteran you are entitled to certain property that you applied for? A. That's right.

Q. And you at that time were working for Mr. Mee in Bakersfield? A. Yes.

Q. You had left War Assets? A. Yes.

(Testimony of John Steven Hildebrand.)

Q. And you came up here from time to time to buy things that Mr. Mee could in turn dispose of, is that correct?

A. Through dealership channel, yes.

Q. In other words, you had made the application and you did get the property and the property would be turned over by Mr. Mee and Mr. Mee would pay you a commission on the sale of the property? A. Yes.

Q. And that was to the extent of \$23,000?

A. No, I couldn't get \$23,000. There was only a few thousand dollars I had used on my property.

Q. I am trying to ask you if \$23,000 worth of property or credit that you exercised, I am asking you what you did with that property after you acquired it? Do I make myself understood to you, Mr. Hildebrand?

A. No, you are referring to \$23,000 credit I had? I didn't have that. [57]

Q. You had credit up to \$25,000 to start with?

A. Yes, to start with.

Q. And I understood you to say the reason you couldn't apply for the trucks in this case is that you had exercised all but \$2,000 or thereabouts?

A. That's right, I applied for certain things and we were called to War Assets about all this mixup and they told us that we had to do this and that.

Q. In other words, told you that you had been operating wrongly and you had no right to dispose of that?

(Testimony of John Steven Hildebrand.)

A. No, they didn't tell us that. If it was disposed of, they could do nothing about that. They gave us the necessary papers. It wasn't our fault they made a mistake.

Q. I see. But you did get about \$23,000 worth of property from War Assets?

A. No, I did not.

Q. How much did you get?

A. I could enumerate it.

Q. No, don't enumerate it; just approximate an amount.

A. It was approximately about \$2,000 is what I got on property until we were told not to operate any more under the condition.

Q. Well, Mr. Hildebrand, I thought you testified that all you had left on your right to purchase was about \$2,000 at the time that these trucks were acquired through Mr. Csaki. Am I mistaken as to that? [58]

A. My partner, Mr. Mee, I should say, had already acquired on his own priorities certain property:

Q. (By the Court): Mee was a veteran?

A. Yes, Mee was a veteran.

The Court: Counsel, there is a distinction that is quite evident: Mee was a veteran.

Mr. Bonsall: Yes, and in business for himself.

Q. (By Mr. Tramutolo): You and Mr. Mee were together? A. Yes.

Q. Were you partners or just working for him?

A. We called it a partnership.

(Testimony of John Steven Hildebrand.)

Q. Let me get back again to this: Each veteran had a right to purchase \$25,000 worth of surplus material. A. Yes.

Q. You had that right as a veteran; Mr. Mee has that right as a veteran; Mr. Csaki had that right as a veteran. Now, the \$25,000 credit that you had the right to purchase, how much of that \$25,000 did you exercise? A. \$2,000 of it.

Q. Only \$2,000? A. That's right.

Q. And you had \$23,000? A. Left.

Q. I had it the other way around and I am mistaken as to that and I apologize. Now, the \$2000 you purchased, what did you [59] do with that material?

A. Mr. Mee needed a laundry for his ranch. He has a 36,000-acre ranch.

Q. Well, not because of it, but who did you dispose of it to?

A. He wanted a Quonset hut which was about 300, and a laundry which was about 250 and this one truck I got which was about 1200. That is about 17 or 18, and I bought some canvas, a tarpaulin, that is all.

Q. You know, prior to this form, Government Exhibit 14, what was done with the ambulance and the panel? A. Ambulance and the panel?

Q. Yes, on Government Exhibit 14 which you filled out.

A. I don't see no panel on here, where I sold the panel.

(Testimony of John Steven Hildebrand.)

Q. What was done with the ambulance?

A. It was sold to another fellow in Oakland.

Q. Will you read that? I can't read that.

A. "One-half ton ambulance."

Q. What is after ambulance?

A. "Or panel."

Q. What does that "panel" mean?

A. It is a panel side truck.

Q. Is it an ambulance with a panel side?

A. An ambulance could be referred to in this case as a panel for delivery purposes.

Q. Now, there were two requisitions: there is "ambulance." [60] What is that word—"or"?

A. "Or."

Q. "Panel delivery one-half, three-quarter or one ton." A. Yes.

Q. Those are two orders on one line, is that correct: One is for ambulance and one is for a panel truck? A. Yes.

Q. Is that one and the same?

A. That is one and the same.

Q. You are referring to the ambulance now, since it is one and the same thing. A. Yes.

Q. All right. That was not disposed of to Mr. De Bon, was it? A. No, it was not.

Q. Now the jeep, one-quarter ton, who was that disposed of to? A. To a fellow in Oakland.

Q. It was not disposed of to Mr. DeBon, was it?

A. No, the only items were——

Q. The trailers, one-quarter—what is that? It is in your handwriting.

(Testimony of John Steven Hildebrand.)

A. "One-half or three-quarter ton trailer."

Q. That was not sold to Mr. De Bon, was it?

A. No.

Q. "A pickup truck." A. No. [61]

Q. "A dump truck."

A. No—the van White trucks.

Q. Three van White trucks were disposed of to Mr. De Bon? A. That's right.

Q. The ambulance was disposed of to somebody else and not to Mr. De Bon?

A. Yes. May I say something here?

Q. Yes.

A. On, I believe, these two dump trucks one-half or two and a half, or three to ten ton, that priority was used for the Chevrolet truck. The question, one-half to two and a half to three to ten ton, as long as you had a priority that stated one-half and so forth on it.

Q. I see. Did you handle all of these transactions with these other people the same way you handled the transaction with Mr. De Bon?

Mr. Bonsall: I object to that, if the Court please, as incompetent, irrelevant and immaterial.

The Court: I sustain the objection.

Mr. Tramutolo: That's all.

Redirect Examination

By Mr. Bonsall:

I have one or two questions I would like to ask, your Honor.

Q. Mr. Hildebrand, this man Mee—what is his first name? A. Tom P. Mee. [62]

(Testimony of John Steven Hildebrand.)

Q. Was he in business?

A. He has his father who was in business and he was the managing director of California Land and Cattle.

Q. Where was his place of business?

A. His place of business was in Los Angeles, the Union Stockyards, I believe, in Los Angeles and the warehouse and yard that Mee had at Bakersfield was the place we were using for our place of business. He claimed he had registered the business with the County of Bakersfield, I mean the City of Bakersfield, and had all necessary papers all arranged at Bakersfield for this business.

Q. Did that business have a name?

A. Yes, sir.

Q. What was the name of that business?

A. California Farm Construction and Equipment Company.

Q. What kind of merchandise did they deal in?

A. We *dealed* in motors and things for the farm that farmers could use, like stationary engines for pumping, and so forth, that we could get through dealers' channels.

Q. Were you interested in that business, and if so, in what way?

A. I was paid salary and commission and expenses.

Q. How long had the business been in operation? When did it start?

A. It started in, I believe, it was June.

(Testimony of John Steven Hildebrand.)

Q. June of what year? [63] A. 1946.

Q. How long did it continue in business? Is it in business yet?

A. It continued until around the first of September.

Q. Was this a good business at the time these priorities were exercised?

A. No, sir, it was not for the simple reason that War Assets was too hard to deal with. Every time you get something from War Assets they would make it a little tougher to get this or that, or they would say things were not available back East. They just kept tying up your money and you wouldn't get anything out of it.

Q. Just one more question: In your dealings with the Mee Company, were you certified to the War Assets Administration as what is known as a veteran dealer? A. Yes, we were.

Q. In these transactions with Csaki, was Csaki in business? A. No, sir.

Q. Is, also,—was a veteran dealer's—

Mr. Tramutolo: Just a moment. I object to the question, if your Honor please, as asking for a conclusion of the witness and an opinion. Whether or not he is or is not a dealer would be determined by their rules and regulations. I ask the question be stricken.

Q. (By the Court): Was he registered, to your knowledge, referring to Mr. Csaki? [64]

A. As a dealer, Oscar Csaki?

(Testimony of John Steven Hildebrand.)

Q. Yes.

The Witness: No, he was not.

Q. (By Mr. Bonsall): In filling in this Form 66, Government Exhibit 14 in evidence, what business did you state Csaki was in? You may take this to refresh your recollection.

Mr. Tramutolo: I submit, your Honor, that the document itself shows what representation was made.

The Court: He said he made it up and it was false. You might read the first part of the document.

Mr. Bonsall: Yes.

“Description of enterprise: Pickup delivery of scrap iron to different disposal yards. Pickup of mattresses and pillows from commercial ships for disinfecting purposes—handling of all types waste materials and products claimed junk or unserviceable.”

Q. Was Csaki in that business at the time you filled that in? A. No, sir.

Q. Had he ever been in that business for himself? A. No, sir.

Q. When was it you said you first met Mr. De Bon? I want to clear up something here.

Mr. Tramutolo: I submit the testimony is already in. He said the latter part of June of 1946.

The Court: I will allow it. [65]

Mr. Bonsall: I will withdraw that question, your Honor. Was the date you first met Mr. De Bon the same date as that on which you filled in this—

(Testimony of John Steven Hildebrand.)

Mr. Tramutolo: Just a moment, I object to that on the ground, if your Honor please, it is not proper redirect examination.

Mr. Bonsall: I am recalling him as a witness, so far as that is concerned.

The Court: It is not proper redirect examination.

Mr. Bonsall: If the Court please, I am recalling him as my witness.

The Court: Well, of course, you may recall him as your own witness, but I think the question has been already covered. I will allow it.

Mr. Bonsall: Will you read the question as far as I got?

(Record read.)

Q. (By Mr. Bonsall, Continuing): —from War Assets Administration, and referring to Government Exhibit 5 in evidence, and requisitions for the three White trucks or the requests for three White trucks, was it the same date?

Mr. Tramutolo: I object to the question on the ground that it is leading and suggestive, it is not cross-examination of anything that he has testified to, or proper redirect examination. The testimony is already in. I think, respectfully, that the prosecution, Mr. Bonsall, is trying to fix a different [66] date than he has already testified to and I make the objection on that ground that the testimony is already in.

The Court: I sustain the objection.

Mr. Bonsall: No further questions.

(Testimony of John Steven Hildebrand.)

Recross-Examination

By Mr. Tramutolo:

Q. Just this one final question, Mr. Hildebrand: Did I understand you to say in response to a question His Honor asked you, that Mr. Csaki was not listed as a dealer with War Assets?

A. He was not; he was a veteran.

Q. He was a veteran? A. Yes.

Q. Were you listed as a dealer? A. Yes.

Q. And are you still so listed?

A. I don't believe so.

Q. When were you taken off, do you know?

Mr. Bonsall: That would be immaterial.

Mr. Tramutolo: All right.

Q. You were a dealer at the time you met Mr. De Bon, is that correct? A. Yes.

Mr. Tramutolo: That is all.

Mr. Bonsall: That is all.

Q. (By the Court): Mr. Hildebrand, one question. [67] A. Yes.

Q. When you informed Mr. De Bon, as you testified, that you had given to Csaki \$125, did you tell him the reason?

A. I don't recall whether I did or not.

Q. Was there any discussion about the \$125.

A. I may have had a discussion and said that if I used his priority he should have something.

The Court: I have no further questions.

OSCAR CSAKI

called as a witness in behalf of the Government,
sworn.

The Clerk: State your name to the Court and jury.

A. Oscar Csaki.

Direct Examination

By Mr. Bonsall:

Q. Where do you live, Mr. Csaki?

A. 75 Rotteck Street, San Francisco.

Q. Did you ever serve in the Second World War? A. Yes.

Q. Were you honorably discharged?

A. Yes.

Q. Where are you employed at the present time?

A. The Emporium.

Q. How long have you been employed by The Emporium?

A. About ten years, including the five years in service.

Q. With the exception of the time you were in the army, were you in the employ of anybody else?

A. No.

Q. During that time were you ever in business for yourself? A. No.

Q. During what period of time were you in the army?

A. January 28, 1941, until October 26, 1945.

Q. Do you know Mr. Hildebrand? A. Yes.

Q. Do you know Mr. De Bon?

A. I met Mr. De Bon.

(Testimony of Oscar Csaki.)

Q. That is the gentleman sitting in back of Mr. Tramutolo, is that correct? A. Yes.

Mr. Bonsall: Is that so stipulated, counsel, that he is referring to the defendant?

Mr. Tramutolo: Yes.

Q. (By Mr. Bonsall): Did you ever make application to the War Assets Administration for a priority to purchase any surplus properties—either the War Assets Corporation or the War Assets Administration? A. Yes, I did.

Q. When was the first time you made such an application—the very first time?

A. December of 1945.

Q. Now, I show you Government Exhibit 13 purporting to be a veteran's application for the purchase of surplus property and [69] property purporting to be signed by Oscar Csaki, and I ask you if you filled in that form and signed the same.

A. Yes.

Q. Were you interviewed by the verifier?

A. Yes.

Q. Were priority certificates issued to you for the property mentioned in this Government Exhibit 13? A. I received that.

Q. Now, did you receive a single item of the property called for in this application?

A. No.

Q. At any time? A. No.

Q. Did you at any time later make application for any surplus property to the War Assets Administration or the War Assets Corporation?

A. Yes.

(Testimony of Oscar Csaki.)

Q. When was that?

A. That was in March.

Q. March of 1946? A. March of 1946.

Q. Now, I show you this Government Exhibit No. 14 in evidence purporting to be the application of Oscar Csaki for certain property, being veteran's application for surplus property, and I ask you if that is your signature on the back of it. [70]

A. Yes.

Q. Was this form entirely filled in by you?

A. Parts 1, 2, 3, 4 and 5 were.

Q. I want to read those parts again.

A. Yes.

Mr. Bonsall (Reading): "Part 1: Applicant—Oscar Nmi Csaki. Mailing address—75 Rotteck Street. Telephone number—EL-2460, San Francisco, 12, California."

Mr. Tramutolo: Stipulated that EL or ELK means Elkridge?

Mr. Bonsall: We can stipulate on that. We won't worry about that. You have been very good on stipulations, counsel.

Mr. Tramutolo: Anything you want I will give you.

Mr. Bonsall. Another application has been filled in on this form SWPC 66:

"Indicate place and date of filing—1355 Market Street, December, 1945. Trade name of enterprise—Csakidson Salvage Company. Address of enterprise—75 Rotteck Street. San Francisco. California."

(Testimony of Oscar Csaki.)

Is that all that you filled in on that form?

A. And my signature.

Q. Do you happen to know who filled in the rest of this form? A. No, I don't.

Q. Did you ever furnish the information to anyone for the description of the property set forth in this form? A. No, I never—— [71]

Q. Did you furnish the information in No. 9 of this form that you were to be taken in as a partner in your father's business at that time, at the time the form was filled in?

A. Form No. 9?

Q. Yes. A. May I see it please?

Q. Yes. A. No.

Q. Did you have a conversation with Mr. Hildebrand before this form was filled in? A. Yes.

Q. When did you have that conversation?

A. I believe in March.

Q. March of 1946? A. March of 1946.

Q. Was it several days or a month or early in March that you had this conversation?

A. It was early in March.

Q. What conversation did you have with him at that time—or, first, who was present?

A. I went over to Hildebrand's house——

Q. First, who was present at the conversation?

A. Hildebrand and I.

Q. Where was the conversation?

A. In Hildebrand's house. [72]

Q. And the date, as near as you can fix it?

A. The first week in March.

(Testimony of Oscar Csaki.)

Q. What conversation did you have with Mr. Hildebrand at that time?

Mr. Tramutolo: Just a moment, before that is answered, if your Honor please. I object to any such testimony on the ground that any testimony he might give would only affect this witness and Mr. Hildebrand and would not be binding on the defendant De Bon and is therefore immaterial and also incompetent.

Mr. Bonsall: Unless the Court feels the conspiracy has been established.

The Court: I think there is sufficient proof of the corpus delicti on that. I will allow it.

Mr. Tramutolo: As I understand, the Circuit Court for this Circuit has laid down the rule that it is no longer required that exceptions be taken?

The Court: That is correct.

Mr. Bonsall: Will you read the question, please?

(Question read.)

Q. (By Mr. Bonsall): Tell us what Mr. Hildebrand said and what you said, as near as you can remember.

A. Hildebrand asked me if I would fill out an application for some ambulances and jeeps, and since I had no use for them, although I wanted a truck for my father's business, I said to Hildebrand that I never cared for any. He said, "Go ahead, fill out the application. You might need one." I said, "I don't need that and you will probably get in trouble." But I felt he knew what he was doing.

(Testimony of Oscar Csaki.)

He said it was all legal and he says, "Will you fill out the application for me?" So we stopped right there. A few days later he asked me to come down to his office and fill in the application, so the following morning I went to have lunch at eleven o'clock and I went down there at 11:00 o'clock.

Q. What address was that where you went?

A. I believe it was 1540 Market Street. I went over to Johnny's office.

Q. (By the Court): Now, who is Johnny?

A. Hildebrand's office. And he gave me this form and he asked me to fill it out. Well, I filled out the first five parts and I can't remember exactly what type of merchandise was in there. I was in a hurry so I filled out the first five parts and he took me over to the certifier and I waited in line and the certifier asked me if this was the merchandise I wanted and I said yes, and I believe he stamped it and I went back and saw Hildebrand and he gave me some pink slips—

Q. (By Mr. Bonsall): Who gave you pink slips?

A. Hildebrand. He received them from the girl at the desk there.

Q. Yes.

A. As it was getting late, I asked Hildebrand if he would fill [74] out the rest for me because I had to go back to work. So I handed him the pink slips and he said he would take care of it and I left him and went back to The Emporium.

(Testimony of Oscar Csaki.)

Q. Now, all of these articles called for in this Government Exhibit 14 in evidence, this jeep one-quarter ton, was that acquired on your priority, to your knowledge? A. Yes.

Q. Do you know anything about these trailers, the quarter ton trailers? Were they acquired on your priorities?

A. I learned they were purchased later on.

Q. Do you know about this pickup truck being purchased on your priority?

A. Learned that later on.

Q. And these dump trucks?

A. Well, I know some ambulances were bought.

Q. When did you hear about the purchase of these different properties—what date?

A. I couldn't say the date. I would say later on in March—perhaps four or five days after I filled out the form, or later.

Q. How did you hear about it?

A. Hildebrand told me he had purchased some ambulances.

Q. I see. When was the next time you saw Hildebrand after this time you signed this Exhibit No. 14 on March 23—when was the next time you saw him?

A. Well, Hildebrand and I live close together and we usually [75] visit and I saw him quite often after that.

Q. Did you have any talk with him about exercising veteran's priority for the purchase of property?

(Testimony of Oscar Csaki.)

A. In May, I believe, in the early part of May, Hildebrand wanted a jeep and I advised him one night over at his house, he asked me if I would get the jeep for him. He wanted it for his own personal use for hunting and such, and as a personal favor I got this jeep for him.

Q. Did you have any other conversation with him after the purchase of the jeep, regarding the purchase of War Assets property?

A. In July.

Q. What time in July?

A. Oh, I would say the first part of July.

Q. Where did you have that conversation?

A. I can't remember whether it was over to his house or over the phone.

Q. When was it? A. When?

Q. Yes. A. July.

Q. What time in July? Can you fix the date a little better?

The Court: We will take a recess at this time, ladies and gentlemen of the jury. Please bear in mind the admonition of the Court not to discuss this case among yourselves, nor permit any person to converse with you on any subject connected with the trial, nor are you to form or express any opinion on the case until it is finally submitted to you.

(Recess.) [76]

Mr. Bonsall: Stipulated the jury is all present, your Honor.

Mr. Tramutolo: Likewise, your Honor.

(Testimony of Oscar Csaki.)

Q. (By Mr. Bonsall): Now, Mr. Csaki, calling your attention to the month of July, 1946, did you have a conversation with Mr. Hildebrand during that month? A. During July?

Q. Yes. A. Yes, I did.

Q. That time in July did you have that conversation with him?

A. I would say the first part of July, perhaps the first week in July.

Q. And where did you have it?

A. It was either at his house or over the phone.

Q. And what conversation did you have with him?

A. He asked me if I would put an application in for a Chevrolet truck, and I asked him what he wanted a Chevrolet truck for, so I had no use for it, I couldn't use it, never wanted it. He said he wanted to get it for a fellow named De Bon, a dealer in Eureka, California. I told him, "Well, I wasn't supposed to take these trucks and give them to the dealer, because they be sold, and I could get in a lot of trouble, never wanted to." Johnny said everything was legal——

Mr. Tramutolo: Just a moment. May I ask, your Honor, when he refers to "Johnny," if he means John Hildebrand. [77]

The Court: John Hildebrand: Refer to the last name.

The Witness: All right, Judge.

So I don't remember signing for it, but I must have gone down, because my signature appears on

(Testimony of Oscar Csaki.)

the proper documents to purchase the Chevrolet truck. Four or five days later I received either \$15 or \$25 for the purchase of the truck.

Q. (By Mr. Bonsall): From whom?

A. From Hildebrand.

Q. Where?

A. I believe over at his house.

Q. Do you recall whether it was in cash or check or how? A. It was cash.

Q. Do you recall what kind of cash it was?

A. It was bills, in bills.

Q. When was the next time—oh, yes, did Hildebrand tell you where the money came from at that time?

A. Well, he said he would give me that money as he had sold the truck to De Bon, or given the priorities to De Bon.

Q. When did you next have a conversation with Hildebrand?

A. I believe a few days later.

Q. Where was that?

A. I believe Hildebrand phoned me and asked me if I would come down and sign an application for one White truck.

Q. Do you recall when that was—a few days later, you said?

A. That was a few days later. [78]

Q. And where?

A. I believe he called me up. And I told him, "Well, I don't want a White truck, I can't use it, and as I say, we will get in a lot of trouble."

(Testimony of Oscar Csaki.)

So he told me he wanted me to get this truck for De Bon. So a few days later I received a notification from War Assets stating that I had three trucks, three White trucks. I called Hildebrand, told him, "What goes on here? We got three White trucks."

So he said the Government had awarded me three White trucks. So a couple of days later Hildebrand phoned me and asked me if I would come down to War Assets, which is on Van Ness Avenue—I don't know the address—so I said, "All right."

So I was supposed to meet him either 9:30 or 10:00 in the morning. I can't remember if Hildebrand brought me down or if I met him down there. Anyway, I got down there, met Hildebrand, and De Bon in front of War Assets on Mar—on Van Ness Avenue—

Mr. Tramutolo: I stipulate that is 30 Van Ness Avenue, your Honor, so there will be no dispute about the place.

Mr. Bonsall: Thanks for the additional stipulation.

Q. Go ahead.

A. I was handed three cashier's checks. Hildebrand told me to take the checks and see a certain party in War Assets, and she would give me the necessary papers to fill out.

Hildebrand and De Bon waited downstairs. I went upstairs, [79] saw the party, filled out the bills of sale, I signed them, walked over to the cashier's cage, presented my papers, and three

(Testimony of Oscar Csaki.)

cashier's checks. She stamped them. I walked downstairs, gave the bill of sales to De Bon. De Bon asked me if I would have these notarized and turn the bill of sales over to him. I said "All right." We walked over to the automotive building, which is a short ways from War Assets, to have these notarized. De Bon and I walked in, but the notary public was out, but there was a girl behind the desk, a stenographer. She filled the pink forms out necessary for the transfer. Naturally, there was no notary public there, so we couldn't have them notarized, so De Bon and I walked out, met Hildebrand, and either De Bon or Hildebrand said there was a notary public in the City Hall, in the basement, so we walked up to the City Hall. Hildebrand and De Bon stayed outside. I went downstairs, but the notary public was out to lunch, so I learned there was one on the third floor, walked up to the third floor, presented the papers, they were notarized, I came downstairs, met De Bon and Hildebrand, turned the papers over to them. As it was getting late they brought me back to the store, and I went back to work.

Mr. Bonsall: I have here three photostatic copies of checks drawn by the Bank of America, payable to Ed De Bon—you saw that before?

Mr. Tramutolo: No. I didn't see them. I stipulate that these are photostatic copies of the originals, your Honor, no [80] objection to them.

Mr. Bonsall: And checks that were turned over to him by Mr. De Bon?

Mr. Tramutolo: Yes.

(Testimony of Oscar Csaki.)

Mr. Bonsall: I ask that they be marked in evidence as Government's Exhibits next in order.

The Court: So ordered.

Mr. Bonsall: This is dated June 24, 1946——

Mr. Tramutolo: June or July, Mr. Bonsall?

Mr. Bonsall: July 24, 1946. It is No. 2818880, drawn by the Bank of America, being cashier's check payable to Ed De Bon in the sum of \$3629, and bearing the endorsement, "Pay to the Order of the Treasury of the United States, Ed De Bon." I ask that be marked in evidence.

The Court: And the amount?

Mr. Bonsall: The amount was given, your Honor.

The Clerk: The amount is \$3629 and no cents. The exhibit is Government's Exhibit 16 in evidence.

The Court: So ordered.

(The document was marked U. S. Exhibit 16 in evidence.)

Mr. Bonsall: The next is a photostatic copy of a cashier's check 2818882, dated July 24, 1946, being cashier's check of the Bank of America, payable to Ed De Bon, in the amount of \$36.29, bearing or purporting to bear the endorsement, "Pay to the Order of the Treasury of the United States, Ed De Bon." [81]

Mr. Tramutolo: Did you say \$36.29? Isn't it \$3629?

Mr. Bonsall: \$3629. I am asking that this check be marked in evidence as Government's Exhibit next in order.

(Testimony of Oscar Csaki.)

I have here check 2818881, being a photostatic copy of a check dated July 24, 1946, payable to the order of Ed De Bon, a cashier's check in the sum of \$3629, and purporting to bear the endorsement, "Pay to the Order of the Treasury of the United States, Ed De Bon." I ask that that be marked Government's Exhibit in evidence next in order.

The Court: So ordered.

Mr. Tramutolo: With reference to the purported partner, your Honor, I want to state there is no doubt that is the signature of Mr. De Bon. They were made out to him and they are actual endorsements.

The Clerk: The last two are Government's Exhibits 17 and 18, respectively.

(The documents were marked, respectively, U. S. Exhibits 17 and 18 in evidence.)

Q. (By Mr. Bousall): Now, Mr. Csaki, I show you this form, being mail order request for surplus property dated July 8, 1946, and purporting to be signed by Oscar Cockey, "J. D. H.," and ask you if that is your signature on there. A. No.

Q. When was the first time you saw that form?

A. In Mr. Kennedy's office. [82]

Q. Had you ever heard of it before you saw it, heard about the transaction before you saw it?

A. Is this for the White truck, here?

Q. It is the Chevrolet, I believe.

A. Well. I did hear about it at the time he called me up and asked me about purchasing the Chevrolet truck.

(Testimony of Oscar Csaki.)

Q. On what date was that?

A. That was in July.

Q. After it had been executed?

A. You mean when I saw this?

Q. You saw that in January, I think.

Mr. Tramutolo: Just a moment. He didn't say January. On that document, there, if you will get the right date, that is very important.

Mr. Bonsall: All right.

Mr. Tramutolo: I suggest, your Honor, that the document, itself, would be the best evidence, and any interpretation would be an interpretation of the witness or counsel for the Government.

The Court: What is the date of the document?

Mr. Bonsall: July 8th.

Mr. Tramutolo: You said January. That was what I was objecting to.

Mr. Bonsall: My question was when he first saw it, your Honor, which is vastly different from the date on the document. [83]

Mr. Tramutolo: Oh.

Q. (By Mr. Bonsall): When did you first see this document?

A. In Mr. Kennedy's office. I believe it was around perhaps February.

Q. Of what year? A. Of '47.

Q. Yes, and you had heard about this transaction before you saw the document? A. Yes.

Q. When did you first hear about this transaction? A. In July '46.

(Testimony of Oscar Csaki.)

Q. July, 1946, was it before or after the date of the document? A. When I saw that?

Q. When you heard about this transaction.

A. It was before I saw that document.

Q. Before you saw the document, but had the document been issued?

A. Well, I don't quite understand.

Q. Well, you had a talk with Mr. Hildebrand about this transaction, didn't you?

A. That's right.

Q. And what did he tell you?

A. He wanted to get a Chevrolet truck.

Q. Well, did he tell you what he had done?

A. No.

Q. Did he tell you he had filled a form in—

Mr. Tramutolo: Just a moment, just a moment, Mr. Bonsall. I don't want to make any objection, but don't lead the witness. That is the objection I make, your Honor.

Mr. Bonsall: Of course, these are not exactly friendly witnesses.

The Court: The objection is sustained, and the jury is admonished to disregard the remark of prosecution counsel that the witness is not friendly.

Q. (By Mr. Bonsall): Did you have a conversation with Mr. Hildebrand regarding his having applied for a Chevrolet for Mr. De Bon?

A. Yes.

Mr. Tramutolo: Just a moment, if your Honor please—it is all right. It has been answered.

The Court: You may answer that.

(Testimony of Oscar Csaki.)

Mr. Tramutolo: The objection, your Honor, I wanted to make is that these questions are leading. I don't have any objection to all of the conversation. I don't care what the conversation is. All I am objecting to is that the question is leading.

The Court: I will sustain an objection to any leading question.

The Witness: Do I answer that?

Q. (By Mr. Bonsall): Yes.

A. When Hildebrand called me up about the Chevrolet truck, before that I never saw any papers, or after that I never saw [85] any papers, until Mr. Kennedy showed them to me.

Q. I see. Now, I show you a form dated 7/8/46, Mail Order Request for certain surplus property, Government's Exhibit in evidence No. 5, and purporting to be signed by Oscar Csaki, and I will ask you if you signed that. A. No.

Q. When did you first see this document?

A. In Mr. Kennedy's office.

Q. At what time? A. In February '47.

Q. Now, I show you Government's Exhibit No. 11, entitled, "Veterans' Trucks and Trailers For Sale June 25 and 26," and ask you if you have ever at any time seen that brochure.

A. I believe I have.

Q. Or a similar one?

A. A similar one to it.

Q. Did you ever select any articles from this brochure at any time? A. No.

(Testimony of Oscar Csaki.)

Q. Now, I show you this brochure dated—or Government's Exhibit No. 12 in evidence, entitled, "Northern California and Nevada Trucks Over 2½ Tons and Truck Tractors For Sale," and ask you if you ever saw that or a similar one.

A. I have seen a similar one.

Q. Did you order any property from this, yourself? [86] A. No.

Q. I have here "Veterans' Reference Certificate" in the name of Oscar Csaki, purporting to be in the name of Oscar Csaki, dated March 27, 1946, bearing the notification, "Certification For Veteran's Preference March 27, 1946, War Assets Corporation, Description of Property, 3 each Van Trucks, 1½ or 2½ or 3 or 4 ton," and ask you if you ever saw that before. A. No.

Mr. Tramutolo: Mr. Bonsall, what exhibit is that, May I ask, please?

Mr. Bonsall: That is Exhibit No. 6.

Mr. Tramutolo: Government's Exhibit 6?

The Clerk: For identification.

Mr. Bonsall: For identification, all right.

Q. Were you ever paid any money by anyone for your service in connection with securing the 3 White trucks? A. Yes.

Q. When.

A. Oh, I would say approximately four or five days after I bought those trucks.

Q. Where?

A. I believe it was over at Mr. Hildebrand's house.

(Testimony of Oscar Csaki.)

Q. And who was present?

A. Hildebrand and I.

Q. How much did you receive? [87]

A. A hundred and twenty dollars.

Q. What did Hildebrand tell you when he gave you the money, if anything?

A. He just said, "Here is a hundred and twenty dollars for your trucks, for the use of your priorities for the trucks that were sold to De Bon."

Q. Was anything said at any time prior to that by Mr. Hildebrand concerning your being paid for your priorities?

A. He mentioned I might profit by it.

Q. When was that? A. In July.

Mr. Bonsall: That's all—Just a moment—excuse me.

Q. By the way, did you ever see this Chevrolet truck in question yourself? A. No.

Q. Did you inspect it, or these three White trucks? A. No.

Mr. Bonsall: That's all.

Mr. Tramutolo: Is that all?

Mr. Bonsall: That's all.

Cross-Examination

By Mr. Tramutolo:

Q. Mr. Csaki, when did you first realize that you had violated the law?

A. Well, Hildebrand said everything was legal. I knew it wasn't right. Off-hand, I just can't say.

(Testimony of Oscar Csaki.)

Q. Did you realize when you were asked by Mr. Hildebrand to sign any documents or permit him to sign any documents for you that you were violating any law?

A. I realized it was not the right thing to do.

Q. When were you first told you were violating the law? A. When was I told?

Q. Yes.

A. I believe around February '46,—'47.

Q. In other words, long after these transactions had taken place you were acquainted with the fact that you had violated some law?

A. That's right.

Q. Prior to that you didn't believe you had violated any law? A. That's right.

Q. You had a conversation with Mr. Hildebrand and let him sign any documents, believing it was all right, is that correct? A. Yes.

Q. In other words, you testified, as I remember on direct examination, that it was getting late one night and you had some forms for things you had applied for, and you let Mr. Hildebrand go ahead and sign your name.

A. I never leave anybody sign my name.

Q. Didn't you say it was late and you had to leave, and you let him sign some forms, or fill out some forms for you?

A. I never said that. I said afternoon, not night.

Q. But you did tell him to go ahead and sign those forms? A. The pink slips, yes.

(Testimony of Oscar Csaki.)

Q. The pink slips are things upon which you get the authority to get your property?

A. I believe they are. I am not too well acquainted with that.

Q. You know that, don't you?

A. No, I don't.

Q. How do you get the property, unless by the pink slips?

A. To the best of my knowledge, if you want to purchase a truck you put your application in, and more or less the same as an application—in other words, you don't actually get the trucks with that.

Q. Based upon the signing of the pink slip, which is preceded by a form called an application, or introduced here in evidence as Form SWPC 66, you just filled that out, did you not, Mr. Csaki?

A. Yes. [90]

Q. Then, when the material that you have applied for, and I now hand the witness Government Exhibit No. 14, referred to as veteran's application for surplus property, after you file this application, then the pink slip, when the property is available, is the thing that has to be signed?

A. Well, to the best of my knowledge, after I have received my pink slips, then at the same time I fill out a supplemental form.

Q. Isn't the pink slip issued after you fill out the form? You make out the application and then get the pink slip, isn't that right?

A. Yes, but I mean the same day.

(Testimony of Oscar Csaki.)

Q. It could be all the same day?

A. That's right.

Q. Before you make the application—withdraw that question, please. After you file the application for the goods that you want to use, are you notified that the goods that you have applied for are now available?

A. You are notified by War Assets.

Q. War Assets sends you a notification?

A. Yes.

Q. Then, what is the next step after War Assets notified you that the material or property you have asked for is available?

A. To the best of my knowledge, you do down to War Assets, if you wish the merchandise, and they have the necessary papers [91] down there for the merchandise you desire.

Q. Did I correctly understand you that you knew nothing about these forms that I now hand you, Which is Government Exhibit for identification No. 1, and also No. 5, did I understand you to say that you never saw those documents?

A. To the best of my knowledge, I never have.

Q. Until February of 1947?

A. That's right.

Q. That is the first time? A. That's right.

Q. Then how were you able to get a bill of sale for the material or the trucks that you had applied for on those forms, the Chevrolet and the three White trucks?

Mr. Bonsall: I object to that, if the Court please.

(Testimony of Oscar Csaki.)

Mr. Tramutolo: I am entitled to that.

The Court: Objection overruled.

The Witness: That I do not know.

Q. (By Mr. Tramutolo): You received a bill of sale for those goods from War Assets?

A. Yes.

Q. Made out to you? A. Made out to me.

Q. Then you endorsed that bill of sale, did you not, to De Bon? A. That's right.

Q. I now show you Government Exhibit 15, a photostatic copy of [92] a bill of sale. Do you recognize that? That is not the original, Mr. Csaki; that is a photostatic copy of the original.

A. I couldn't say I recognize it, because I received the bills of sale and I brought them right downstairs.

Q. Does your name appear anywhere on that document? A. No.

Q. Is that the form of bill of sale which you were given by the government in order to acquire title to the Chevrolet truck and the three White trucks?

A. I believe it is, but I can't exactly remember.

Q. Will you read the language on there with regard to what it says on the matter of your ownership of that property?

Mr. Bonsall: I think the document speaks for itself, your Honor, and I object to the question.

The Court: Objection overruled.

The Witness: Just what do you want me to read?

(Testimony of Oscar Csaki.)

Mr. Tramutolo: The language that pertains to the ownership of the property to which you are making a bill of sale to De Bon.

A. (Reading) "The said seller hereby warrants that he is the lawful owner of said vehicle; that it is free from all liens and incumbrances except lien in favor of Mercantile Acceptance Corporation, Eureka, California; that he has the right to sell same as aforesaid, and that he will warrant and defend the title of the same against claims and demands of all persons whomsoever [93] except lienholder noted above."

Q. It was those types of bills of sale that you went to the City Hall with and notarized and turned over to Mr. Hildebrand for Mr. De Bon, they being downstairs at the time, when you went upstairs to have them notarized, is that correct?

A. I presume they were.

Q. You knew what you were signing?

A. I knew I was signing a bill of sale.

Q. Then when you said you had no knowledge of the trucks whatsoever until February when Mr. Kennedy showed you the mail form you were mistaken?

Mr. Bonsall: I don't think he said that.

The Witness: I did not say that.

Mr. Tramutolo: All right, I will reframe the question.

Q. Did I understand you to say that you knew nothing about the ordinary procurement of the Chevrolet truck and the three White trucks that

(Testimony of Oscar Csaki.)

were delivered to Mr. De Bon some time in July of 1946 until Mr. Kennedy discussed the matter with you in February of 1947?

A. Do you mean the purchase of the trucks?

Q. Yes.

A. No, I bought the trucks; I bought the three White trucks.

Q. You bought them in July of 1946, is that correct? A. Right.

Q. Then what did you mean to say when you said that you knew [94] nothing about the execution of the mail order for the sale?

A. I was referring to the forms Mr. Bonsall showed me.

Q. You knew about getting title to the property yourself, didn't you? A. That's right.

Q. So the matter of the papers meant nothing to you; you thought you had title at the time that was sold to Mr. De Bon?

A. Will you state that again?

Q. You thought you had a right to apply for the property which was ultimately delivered, to sell it to De Bon?

Mr. Bonsall: I object to that question.

The Court: Objection overruled.

The Witness: Well, as I said, as I stated before, Mr. Hildebrand said it was all legal.

Q. (By Mr. Tramutolo): Well, you had no knowledge at the time you acquired them and transferred them to Mr. De Bon that you were doing anything illegal, is that correct?

A. Yes.

(Testimony of Oscar Csaki.)

Q. You would say the form here, Government Exhibit 14, which Mr. Bonsall read was filled out. Who filled it out? A. I did.

Q. Is that "Mr. Csaki and Son"?

A. Right.

Q. Is that "Csakidon Salvage Company"?

A. That's right. [95]

Q. Were you in the salvage business at the time?

A. No.

Q. Why did you fill it out and so represent to the government that you were in the salvage business?

A. I was told that in order to get those priorities.

Q. By whom?

A. By Hildebrand, to fill it out the same way.

Q. You did this of your own volition, didn't you?

A. Yes.

Q. You filled out your name and you put your initials "MNI" and your first name "Oscar" and your last name "Csaki"? You filled that out?

A. Yes.

Q. And you gave your address and the address where you were going to conduct your enterprise?

A. Yes.

Q. After that was filled out by you and everything else was put in there of the material desired and why you wanted the material, then you are interviewed by someone in War Assets, are you not?

A. I was not interviewed.

Q. Were you screened by what they call a screener? A. I went up to the certifier.

(Testimony of Osear Csaki.)

Q. What did the certifier say to you?

A. That I can't remember. I presume he said, "Is this the [96] merchandise that you wished?"

Q. Did you take an oath when you went to the certifier?

A. I don't think so.

Q. But you did tell him everything on this application was correct and this was what you desired?

A. That's correct.

Q. And he asked you specifically about each item, what you wanted it for and discussed all of the facts?

A. No, he never.

Q. Didn't he?

A. No.

Q. You told him what you were going to do with it?

A. No.

Mr. Bonsall: I object to all this, your Honor.

The Court: Objection overruled.

Q. (By Mr. Tramutolo): Were you going into business at the time Government Exhibit 14 was filled out? Were you and he going into business?

A. No.

Q. You were not going into business?

A. No.

Q. Are you sure of that?

A. That's right.

Q. Do you know who the property on the various items you applied for was sold to by you outside of the trucks? [97]

A. Will you state that again?

Q. Do you know the persons to whom you sold the various items appearing on the application, Gov-

(Testimony of Oscar Csaki.)

ernment Exhibit 14, I believe it is; for example, the jeep, which you say you got from Mr. Hildebrand? A. Yes.

Q. Do you know to whom the trailer, the one-quarter ton truck went?

Mr. Bonsall: I object to that as incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. (By Mr. Tramutolo): What is your connection with The Emporium?

A. I am Assistant Furniture Buyer.

Q. And you have been in that capacity for about ten years, did I understand you to say?

A. No, I have been about two and a half years in that capacity.

Q. But you have been with The Emporium ten years? A. That's right.

Q. And you have been assistant buyer in the furniture department since you have been out of the service?

A. Well, since about four or five months after I was out of the service.

Q. By the way, did you and Mr. Hildebrand ever join in any [98] business enterprise together?

A. No.

Q. Your father is in the salvage business, is he not? A. Yes.

Q. Did you ever have any conversation with regard to, or did you ever discuss this case with anyone, Mr. Csaki? A. Yes.

Q. Or your testimony in this case?

A. Yes.

(Testimony of Oscar Csaki.)

Q. Who did you discuss it with?

A. Hildebrand.

Q. Hildebrand? A. Yes.

Q. Did you discuss it with him on more than one occasion? A. Oh, I believe so.

Q. Several times, did you not?

A. Yes, that's right.

Q. You went into detail as to what the nature of your testimony in this case was going to be with him, did you?

A. Well, I told him I was going to tell the truth.

Q. You told him that several times?

A. That's right.

Q. What did he tell you?

A. "That is what you should do." In fact, I asked that my testimony be shown to Mr. Hildebrand so that he could see it. [99]

Q. In other words, you made out a detailed statement of your testimony?

A. That's right.

Q. To whom? A. Mr. Kennedy.

Q. And Mr. Bonsall?

A. And to Mr. Bonsall.

Q. And you asked him to show that statement to Mr. Hildebrand?

A. No, in February of 1947 I asked Mr. Kennedy if he would show it to him. I don't know whether he did or not.

Q. You asked him to do so? A. Yes.

Q. Did you discuss this case with Mr. Hildebrand since you have been in here in court waiting to be called as a witness? A. Yes.

(Testimony of Oscar Csaki.)

Q. In other words, you have discussed it since you have been out in the corridors? A. Yes.

Q. And the nature of your testimony?

A. Yes, we just said, "How are you coming along?" and things like that—what was going on.

Q. Did you discuss the case with anybody else besides Mr. Kennedy of the FBI, Mr. Hildebrand and Mr. Bonsall?

A. I talked to my lawyer, Mr. Leland.

Q. Anyone else? [100] A. No.

Q. Did you discuss it with your father or members of your family?

A. Yes—when do you mean?

Q. Any time. I am trying to get the persons with whom you discussed it. You have entered a plea in this case, haven't you, Mr. Csaki?

A. Yes.

Q. Have any promises been made to you as to what is going to happen? A. No.

Q. You never discussed that with anyone?

A. How do you mean?

Q. What the likely punishment might be.

A. Yes.

Q. Who did you discuss it with?

A. My lawyer and my folks.

Q. Your lawyer and your folks.

A. Yes.

Q. Have you ever been in any previous trouble, Mr. Csaki? A. No.

(Testimony of Oscar Csaki.)

Q. Did Mr. De Bon ever ask you to do anything in connection with your acquiring of the property you first received and which he ultimately received?

A. Only to turn the White trucks over to him, the bills of [101] sale.

Q. Did he at any time intimate or suggest that you should do anything wrong with any agency of the government? A. No.

Q. And you did not know you were doing anything wrong until Mr. Kennedy talked to you in February, 1947, is that correct? A. Yes.

Mr. Tramutolo: That is all.

The Court: Mr. Bonsall, you may take up your redirect examination at 2:00 o'clock. We will take an adjournment until that time.

Ladies and gentlemen of the jury, please remember the admonition heretofore given you by the court not to discuss this case among yourselves, nor permit any person to converse with you on any subject connected with the trial, nor are you to form or express any opinion on the case until it is finally submitted to you.

(Thereupon an adjournment was taken until 2:00 p.m.) [102]

Afternoon Session, 2:00 o'Clock P.M.

The Court: Stipulated that the jurors are present?

Mr. Bonsall: It is, your Honor. Mr. Csaki was on the stand, I believe.

The Court: He may be recalled.

OSCAR CSAKI

recalled, previously sworn.

The Clerk: The witness on the stand is Oscar Csaki, heretofore sworn.

Redirect Examination

By Mr. Bonsall:

Q. Mr. Csaki, did you ever actually inspect any property of any kind that you purchased on your priorities? A. No.

Q. Did you ever at any time have any expense in connection with those properties?

A. Pardon me?

Q. Did you at any time have any expense in connection with the purchase of articles on your priorities? A. I had no expense.

Q. Did you ever get anything for yourself from the articles that you purchased? A. Yes.

Q. What was the first amount you received?

A. I received either fifteen or twenty-five dollars from the purchase of the Chevrolet truck.

Q. What was that for?

A. For the Chevrolet truck.

Q. All right, did you receive any other money for yourself?

A. I received \$120 for the purchase of the three White trucks.

Q. What was that for?

A. For the purchase of the three White trucks.

Q. On your priorities?

A. On my priorities.

(Testimony of Oscar Csaki.)

Q. By the way, did you ever actually get the physical possession of any property from the War Assets Corporation for yourself, the physical possession of the property?

A. No, I never received any property for myself.

Mr. Bonsall: That's all, your Honor.

Recross-Examination

By Mr. Tramutolo:

Q. Mr. Csaki, who paid for the Chevrolet truck which you had applied for?

A. That I don't know, I don't remember.

Q. But you did know that it was paid for by someone, didn't you?

A. Somebody paid for it.

Q. And you also made a bill of sale of the Chevrolet truck to Mr. De Bon, as you had made in the White trucks?

A. For the Chevrolet truck? [104]

Q. Yes. A. That I don't know.

Q. How did you convey title to Mr. De Bon?

A. I can't remember. I can't remember if I turned the bill of sale over to him at all.

Q. Now, I am correct, am I not, Mr. Csaki, that it is your testimony that you had no knowledge of any wrong-doing until February, 1947, when you talked to Mr. Kennedy, of the Federal Bureau of Investigation?

A. I am sorry. I can't hear you. You will have to talk louder.

Q. Pardon me?

A. You will have to talk louder.

(Testimony of Oscar Csaki.)

Q. Oh, I thought I was talking pretty loud. And I am correct, that your testimony this forenoon was to the effect or specifically that you had no knowledge that anything that you did was wrong until February of this year, when you talked to Mr. Kennedy?

A. That's right.

Q. Have you a dealer's license with the War Assets Administration, or any other branch of the Government?

A. No.

Q. What sort of a license have you, if any?

A. I haven't any.

Q. You merely have a veteran's preference?

A. A veteran's priority.

Q. And the veteran's priority gives you a credit or the right [105] to buy \$25,000 worth of property from the Government?

A. Yes.

Q. And do you know how much of that 25,000 you exercised?

A. The Chevrolet truck and the three White trucks. I don't actually know.

Q. So you still have a balance with War Assets?

A. I presume so. I never knew how much we were allowed.

Q. Well, they deducted the jeep that you bought, didn't they?

A. I don't know. That is something I know nothing of.

Q. What about the ambulance?

A. I don't know anything about that. I mean I know the ambulance were purchased, but how they were bought or anything like that—

(Testimony of Oscar Csaki.)

Q. Did you make a bill of sale for any other property to whoever bought it? A. No.

Q. You never made a bill of sale and don't know who got the money for the sale of that property?

A. Who got the money?

Q. Yes.

A. No, I don't know anything about those transactions.

Q. Didn't it occur to you, with all these transactions, that you were doing something wrong?

A. Well, Hildebrand said it was legal. I put up an argument, but I figured he was in War Assets, and as he said, sometimes there was an over-surplus, where everything was legal, so I [106] took his word for it.

Q. Did you know if he had a dealer's license?

A. Did I know if he did?

Q. Yes.

A. I don't know if he did, or not. I don't think so.

Q. And you say you never discussed with Mr. Hildebrand the joint venture between yourself and himself to go into business, is that correct?

A. That's right.

Q. Well, when you discussed your application with the man that they called the screener, or the one who interviewed you as to your discharge from the Army, that it is honorable, and all that, didn't you discuss with him that you were going into business, either by yourself or with someone?

A. I am sure I never, but I can't recall.

(Testimony of Oscar Csaki.)

Q. You wouldn't say you didn't?

A. That is right.

Q. Am I to assume you did this just as a matter of accommodation to Mr. Hildebrand?

A. Yes.

Q. With no view of making any profit, yourself?

A. That's right.

Q. Or doing anything wrong by yourself, or by or with anyone else? A. That's right. [107]

Mr. Tramutolo: That's all.

Further Redirect Examination

By Mr. Bonsall:

Q. Did you receive any money out of any other transactions other than the two amounts you have mentioned, this \$25 and \$120? A. No.

Q. Not one penny more?

A. That's right.

Q. Not from any transaction?

A. Not from any transaction.

Mr. Bonsall: No further questions, your Honor.

Mr. Tramutolo: That's all, your Honor.

The Court: Is that all?

Mr. Bonsall: At this time I want to introduce some documents that have been marked for identification, in evidence.

The Court: Mr. Witness, sit down a moment. You said you did not have in mind any profit motive in these transactions?

The Witness: That's right.

(Testimony of Oscar Csaki.)

The Court: How do you account for the sum of \$150, \$125 in one transaction and \$25 in another? How do you account for that?

The Witness: I never received \$150.

The Court: \$25 for the first car, and \$125 for the three Whites? [108]

The Witness: No, I received fifteen or twenty-five dollars on the first transaction and \$120 on the other.

The Court: How do you account for those sums?

The Witness: As far as that. I never expected anything. I was doing it as a personal favor for Mr. Hildebrand, and he gave me the money, so I accepted it.

The Court: You knew the source of that money, did you not?

The Witness: Yes.

The Court: You knew it came from Mr. De Bon?

The Witness: Yes.

The Court: That's all.

Mr. Tramutolo: Mr. De Bon didn't give it to you direct, did he, Mr. Csaki?

The Witness: No.

Mr. Tramutolo: All you know as to how it reached you or where Mr. Hildebrand got it was what he told you?

The Witness: That's right.

Mr. Bonsall: How many times did you see Mr. De Bon altogether?

The Witness: I met him the first time at War Assets, on Van Ness.

Mr. Bonsall: On what date?

(Testimony of Oscar Csaki.)

The Witness: I believe that was in July.

Mr. Bonsall: July, 1946, just the one time?

The Witness: That's right. [109]

Mr. Bonsall: No further questions.

The Court: That is all.

Mr. Bonsall: At this time I would like to introduce in evidence Government's Exhibits 2, 3, 4, 6, 7, 8, 9, and 10, which have all been marked for identification. At this time I would like to offer them in evidence. They are all official records.

The Court: They may be received and marked.

Mr. Tramutolo: No objection, your Honor.

The Clerk: They are marked Government's Exhibits 2, 3, 4, 6, 7, 8, 9, and 10, respectively.

(U. S. Exhibits 2, 3, 4, 6, 7, 8, 9 and 10 for Identification were thereupon received in evidence.)

Mr. Bonsall: The Government has no further witnesses at this time.

Mr. Tramutolo: Does the Government rest?

Mr. Bonsall: The Government rests.

Mr. Tramutolo: I would ask that the jury be excused for a moment, as I desire to make a motion.

The Court: Ladies and gentlemen of the jury, you may be excused until called by the bailiff or marshal, during the course of arguments on certain legal matters.

(Thereupon the jury withdrew from the courtroom, and the following proceedings were had:)

Mr. Bonsall: May it please the court, I will also ask [110] that No. 1 for Identification be marked in evidence.

The Court: The jury is absent.

Mr. Tramutolo: I have no objection, your Honor.

The Court: Do you waive any objection on that score?

Mr. Tramutolo: I waive any objection of the jury's presence.

The Court: It may be appropriately marked.

The Clerk: It is marked Government's Exhibit 1.

(U. S. Exhibit 1 For Identification was thereupon received in evidence.)

Mr. Tramutolo: May I proceed, your Honor?

The Court: Yes.

Mr. Tramutolo: If your Honor please. I now make the request for a motion for acquittal on all three counts, based on the very recent testimony, which your Honor is as well aware of as I am.

The very best that can be said about all of the testimony is that it is susceptible of two constructions, one possibly leading to guilty knowledge on the part of the defendant De Bon; and certainly the other that he was innocent of any wrongdoing.

You recall Mr. Hildebrand's testimony that he, himself, was a dealer, that he had no need, or the firm that he was with at the time, or the man he was in partnership with, had any need for the property which he acquired through Mr. Csaki [111] and which was later sold to Mr. De Bon.

Mr. De Bon had no transaction whatsoever with Csaki, with the exception that he prepared the bills of sale which were later notarized. The cashier's checks which I admitted here, your Honor, are made out in De Bon's name. That is not the act of a person trying to conceal, or guilty of any wrong-doing. If anything had been done here clandestinely, your Honor, I could well understand why you might submit to an inexperienced jury because this is their first trial—a case of this type. There is no evidence here remotely connecting De Bon with any conspiracy, guilty of any wrong-doing, because the evidence here, your Honor, is——

The Court: Mr. Tramutolo, not to unduly interrupt you, may I again ask you to explain the two cash payments?

Mr. Tramutolo: To Hildebrand, yes, your Honor.

The Court: And also the payments made to Csaki.

Mr. Tramutolo: Whether Csaki was to get anything out of that, your Honor, there is no evidence that De Bon wanted him to get any portion of it. There is nothing wrong that if you exercise a priority and have the right to do so for me under the Act to pay you any bonus over and above the cost to the Government, because the Government is not defrauded, because it has received full payment; so that I can say this without fear of contradiction, your Honor; in a sale that occurred just as recently as last week at Belleair, across the bay—or down the Peninsula—where millions of dollars worth of

property were sold, where the Veterans had sole priority, and they were there with counsellors who were permitted to remain there, although they are usually excluded, millions of dollars worth of property was bought by veterans but never reached the veterans.

Now, if De Bon was trying to do something dishonest, I could well understand why this case should go to a jury, but I am frank to say that your Honor must believe that this testimony, at very best, is susceptible of two interpretations, and where it is, the jury, if it was a jury matter, or submitted to the jury, should give the defendant the benefit of the doubt and acquit. That would be an instruction.

Now, that being true, it is a stronger reason why your Honor should grant, in a case of this type, tremendously, in my experience, as weak a case as I have seen, and your Honor should grant this motion. I am not trying to criticize the FBI. They have their problems. I am not trying to criticize the office of the United States Attorney, because I held that office once and know their problems; but here are two witnesses, the Government's own witnesses, who have said they never were guilty of any wrongdoing. Csaki said he didn't know anything was wrong until he talked to Mr. Kennedy at the FBI in February of this year.

The Court: In the earlier stages of his testimony, he said he was very much concerned about the transaction, he was restive [113] about the transaction, he felt there was wrong-doing; latterly he recanted from it, so there are two interpretations.

Mr. Tramutolo: The most favorable construction of this testimony should be taken by your Honor with that view, because they are Government witnesses. Here is Hildebrand, a man who has a priority. He is acting as a dealer. He said to Csaki that everything was regular. Csaki permitted him to sign forms. Csaki makes bills of sale upon which he guarantees and warrants the title of that property. Now, there is nothing in the Act that prevents me, or you, or anybody else, when a veteran has exercised his priority for anything to which he has an exclusive priority to sell that, and if I purchase it with no wrong-doing in the preparation of any documents—which De Bon had never seen or had anything to do with—I am not guilty of any crime, and particularly the charge here, which is in three counts, one of conspiracy, and two substantive counts of filing certain claims.

Here is a man that is screened. He is asked about the nature of his business and the applications he has filed here: “Are you going into business? What are you going to do with this?”

Now, I do say this, that on the form there it says, “This property is not for resale.” That is binding upon the veteran but that is not binding upon a person who buys from the veteran, because it must have that language in the act, because the [114] penalty in this case, if a penalty would have to be imposed, must stem from the Act, itself, and I say, your Honor, that I wouldn’t make a motion of this type if there was any question in my mind of the sincerity of the defendant, but the seriousness of going to trial and putting on a defense is something that

is a substantial constitutional right, and I hope the court exercises it in this case, because this testimony, all of it, is susceptible of two interpretations.

The Court: Mr. Bonsall?

Mr. Bonsall: I feel, your Honor, that there is a conspiracy in this case. It was dependent on the exercise of Csaki's priorities that Hildebrand was able to act, and only through the co-operation of Hildebrand and Csaki was our friend Mr. De Bon able to obtain the trucks in question. I think there is—and further, we overlooked the fact that the money in this case was furnished by Mr. De Bon, and, as your Honor remarked, that money was paid to Hildebrand and divided with Csaki.

The Court: Of course, Csaki received two independent sums. Immediately after the first transaction he received \$25. Now, he knew the reasons underlying that payment; he knew why he received that money. He now professedly claims that he acted honestly upon the advice of Hildebrand. Thereafter there was another transaction; he received \$125. If he did not have knowledge in the first transaction he certainly had knowledge in the second transaction. Here are two separate, isolated transactions where he received separate sums of money. In addition to that, we find Mr. De Bon making cash payments surreptitiously, and all of these transactions are generally handled, in an automobile outside of the premises. That is a jury question. The motion is denied.

Mr. Tramutolo: May I note an exception, your Honor?

The Court: Yes, sir. Call the jury.

(Thereupon the jury was returned into the courtroom and the following proceedings were had:)

The Court: The jurors are present, gentlemen; you may proceed.

Mr. Bonsall: So stipulated, your Honor.

The Court: Mr. Tramutolo, you may make your statement. I presume you desire to.

Mr. Tramutolo: May it please the Court, and you, ladies and gentlemen of the jury, the defendant will take the stand in his own defense, and I expect to prove by him that in the acquirement of this property from Hildebrand, who held a veterans'—or a dealer's, rather than a veterans' license from War Assets, that he was not guilty of any wrongdoing in acquiring that property, that is, the trucks testified to. I have said on several occasions, as you no doubt heard, two Chevrolets, but the charge is but one Chevrolet and the three White trucks.

Mr. De Bon met Mr. Hildebrand the day that the Chevrolet [116] truck was acquired, around about July 8, 1946, and in talking at the War Assets headquarters at 30 Van Ness Avenue that there were certain brochures there and catalogs with regard to sales to veterans and dealers who held priorities, such as Mr. De Bon, who, we will prove, held a dealer's priority and credit with the War Assets,

and that a discussion occurred, and they finally got around to the matter of trucks which De Bon was interested in, and he said to Mr. Hildebrand, if these can be acquired "I am interested."

We will prove also that money that has been testified to, paid as a bonus, I think first \$50, although again I must and will come in perhaps that there was a hundred dollars for the two Chevrolets, but the Government again only relies on the 50 paid for one Chevrolet, and approximately 570 or 80 was paid to Mr. Hildebrand for the three White trucks, or the three trucks, whether they are White trucks, or not, but they are referred to as White trucks, and I believe that is the charge in the indictment, that Mr. De Bon never told Mr. Hildebrand to make any division of that money to anyone. He was paying him merely a bonus, in the belief that this man was a dealer.

We also expect to prove that Mr. De Bon, up to the present moment, has a credit and has purchased property from the Government and from the War Assets, where he is known to the officials, and their employees.

Further, we expect to put Mr. De Bon's character into [117] issue, or as an issue in this case, and on so doing I naturally am going to expect all of you to return a verdict of not guilty.

Mr. De Bon, take the stand.

ED DE BON

the defendant, was sworn as a witness in his own behalf.

The Clerk: Will you state your full name to the court and jury?

The Witness: Ed De Bon.

Mr. Tramutolo: May I also say, your Honor, that this would not apply to you, because you can ask a question at any time, but new jurors sometimes feel they would like to ask a question, and they don't think they have the authority. I want this jury, any one of you, to ask Mr. De Bon any questions. I may, with what little adroitness or ability I have, overlook something, and if anything occurs to you that you want to ask him, please do so.

The Court: That may be the order, Mr. Tramutolo. If any of the jurors have any question in mind concerning his testimony, you may ask it through the court.

Direct Examination

By Mr. Tramutolo:

Q. What is your full name?

A. Ed De Bon.

Q. Speak loudly so Mr. Bonsall, back here, can hear you.

Mr. Bonsall: That is not one of my faults. I have pretty [118] good hearing.

Mr. Tramutolo: I wouldn't say that about you, Mr. Bonsall.

Q. Where do you reside, Mr. De Bon?

A. Eureka, California.

(Testimony of Ed De Bon.)

Q. How long have you resided there?

A. About two years.

Q. Where did you reside previous to residing in Eureka, California?

A. Mt. Shasta and Weed, California, both.

Q. How long did you reside in Mt. Shasta?

A. Oh, between Weed and Mt. Shasta I should say about thirty years.

Q. In Weed and Mt. Shasta about 30 years.

A. That's right.

Q. And what is your business, Mr. De Bon?

A. Automobile and trucks, selling and buying.

Q. How is that?

A. Selling and buying automobiles and trucks.

Q. And you have purchased, have you not, considerable property from the Government, War Assets?

A. Yes, I have.

Mr. Bonsall: That is objected to. We are concerned with this particular property.

The Court: Overruled. [119]

Q. (By Mr. Tramutolo): And you hold a credit from the War Assets Administration for the purchase of property?

A. Yes, I have.

Q. And, Mr. De Bon, you visit San Francisco frequently, do you not, to go to War Assets and purchase property and look for property you are interested in?

A. Once a week.

Q. And you have been doing that for what period of time?

A. Well, about fourteen months, fifteen months.

(Testimony of Ed De Bon.)

Q. Now, have you any agency at the present time in Eureka, any automobile agency?

A. Yes, I have.

Q. What agency do you handle?

A. We handle the Federal truck line and the Kaiser and Frazer automobiles.

Q. The Federal trucks and the Kaiser and Frazer automobiles? A. That's right.

Q. What other agencies have you had, Mr. De Bon?

A. Previously we had Cadillac, Chrysler, Plymouth, Nash, General Motors Trucks, for the last twenty years, twenty-five.

Q. As I understand it, you have resided in Northern California practically for the past thirty years or more? A. Right.

Q. How old are you, Mr. De Bon?

A. 51. [120]

Q. What does your family consist of?

A. My wife and boy.

Q. Is your boy of age? A. 27.

Q. What does he do?

A. He is a doctor.

Q. And the other member of your family is your wife? A. That's right.

Q. Getting down to the charge in this indictment, when did you first, or did you know John Hildebrand?

A. I met him on July 8, 1946.

Q. And where did you meet him?

A. Van Ness Avenue.

(Testimony of Ed De Bon.)

Q. And was that a pre-arranged meeting, or was it just accidental? A. Accidentally.

Q. You say you met him where?

A. At 30 Van Ness Avenue.

Q. At the War Assets Administration?

A. That's right.

Q. What was he doing there at the time you met him?

A. I couldn't tell you. He was walking in and out of the building, and someone introduced me to him, and we got to talking about trucks and so on, and the conversation come up regarding he had a couple of trucks that he couldn't use. He asked me [121] if I could use them. I told him I probably could, that I am in that line of business. We finally that afternoon got together and I told him I will take the trucks, and I purchased those two Chevrolet trucks.

Q. You purchased the two Chevrolet trucks——

A. In the meantime he told me he had two or three others that he had applied for that was coming up and he couldn't use, and if I might could use them he was willing to sell them, and I told him, "If you can't use them I will buy them and take them off your hands and give you a little profit."

Q. You told him you would give him some profit?

A. That's right.

Q. What did you tell him you would pay him for the two Chevrolet trucks? A. \$100.

Q. \$50 for each truck? A. Right.

(Testimony of Ed De Bon.)

Q. Did you ask him to divide that money or give it to anyone?

A. I didn't know anyone was connected.

Q. With respect to the three White trucks, what did you pay him? A. \$580. [122]

Q. \$580? A. Yes.

Q. With respect to the \$100 you paid Mr. Hildebrand, how did you pay him, by check or by currency?

A. I had quite a bit of currency in my pocket and I gave him \$400 in currency and a \$150 check.

Q. No, I am asking about the Chevrolet.

A. \$100 in currency.

Q. \$100 in currency? A. Yes.

Q. Where did you give him that currency?

A. Right up in the office of War Assets Administration.

Q. How was the Chevrolet paid for when you got the bill of sale?

A. A couple of cashier's checks.

Q. Two cashier's checks?

A. One or two cashier's checks.

Q. One or two cashier's checks?

A. Yes, one or two—I couldn't say.

Q. You also paid for the White truck, didn't you? A. Yes.

Q. You obtained the cashier's checks which have been introduced here and which were made out to you? A. Yes, for my name.

Q. And delivered to War Assets for the payment of those trucks? [123] A. Yes.

(Testimony of Ed De Bon.)

Q. Did you get a bill of sale for the Chevrolet trucks? A. Yes.

Q. What did you do with the bill of sale when you obtained it?

A. I took it home and when we sold the Chevrolet truck I had to send it to the Division of Motor Vehicles for transfer.

Q. You are talking about the bill of sale that you received and then you sent it to the Department of Motor Vehicles for transfer?

A. Yes. For transfer to the new buyer, and the second one I still have at hand.

Q. You still have the Chevrolet on hand?

A. Yes.

Q. With respect to the White trucks, did you do the same thing?

A. Same thing—same routine.

Q. You were starting to state you had made a payment of \$580 to Mr. Hildebrand for the White trucks. How was that payment made?

A. In cash and \$430 in cash and \$150 check; as I recall.

Q. Which you made out to Hildebrand?

A. No. The check was payable to me and I endorsed it.

Q. You endorsed the check and delivered it to Mr. Hildebrand? A. Yes.

Q. Were you aware of any wrong-doing when you purchased this material or these trucks from Mr. Hildebrand? [124]

(Testimony of Ed De Bon.)

Mr. Bonsall: That is calling for a conclusion and opinion, your Honor.

The Court: Sustained.

Mr. Tramutolo: All right.

Q. Did you ask Mr. Hildebrand or anyone else to falsify any record that had to be delivered to the government, the War Assets Administration, or any other agency? A. No.

Mr. Bonsall: I object to the question on the ground it is leading.

The Court: Objection overruled.

Q. (By Mr. Tramutolo): What is the answer?

A. No.

Q. Did you know what, if anything, Mr. Csaki and Mr. Hildebrand were doing with regard to any government documents? A. No, I didn't.

Q. Did you ever attend any meeting where these documents were discussed? A. Never.

Q. But you would know, would you not, that you as a dealer could not buy those trucks?

A. Yes, sir.

Q. How did you happen to buy them from Mr. Hildebrand?

A. He was introduced to me as a dealer.

Q. He was introduced to you as a dealer, as one having a [125] dealer's license? A. Yes.

Q. Your transactions, then, were all with Mr. Hildebrand? A. Yes.

Q. Did you ever have any dealings with Mr. Csaki?

A. Never. I never met the man until July 24.

(Testimony of Ed De Bon.)

Q. That is the time that he gave you a bill of sale which was notarized? A. Right.

Q. You insisted upon having it notarized?

A. Right.

Q. Mr. De Bon, have you purchased from a government agency or any government agency, including War Assets, any property as recent as, say, the past two weeks?

Mr. Bonsall: Objected to as immaterial.

The Court: Sustained.

Mr. Tramutolo: My purpose in asking the question, your Honor, is to show that Mr. De Bon still is regarded as a man of integrity. Otherwise he could not deal with an agency. They would cut him off immediately.

The Court: We are trying one case only here, Mr. Tramutolo.

Mr. Tramutolo: All right, I understand, your Honor.

Q. Mr. De Bon, why did you pay by cashier's checks for the Chevrolet truck or trucks and also the three White trucks instead of using your credit card with War Assets? [126]

A. The only time we used a credit card—I have a credit up to \$100,000 or \$150,000.

Mr. Bonsall: I move to strike that as a voluntary statement and not responsive to the question.

The Court: I will allow it. He has a credit rating.

Q. (By Mr. Tramutolo): Will you repeat that, Mr. De Bon?

(Testimony of Ed De Bon.)

A. The only time we used our credit card is out of the state where I am unknown.

Q. Where you are not known?

A. That's right. I have to bring a card where they won't take my check. If we were in a situation where we couldn't get a cashier's check and we don't know the amount of the material we want, I use that credit.

Q. But in San Francisco you pay by cashier's check?

A. Either by cashier's check or my own personal check.

Q. But you use your credit when you go into communities where you are not known?

A. Right.

Q. When was the first time you knew, Mr. De Bon, that you were involved in anything that violated the law with regard to these transactions?

A. Along—probably—I couldn't recall. It was either January or February of this year when a man from the government came up and saw me.

Q. Where did he come? [127]

A. Eureka.

Q. Did you talk to him at the time?

A. Yes.

Q. What did you tell him or what did he ask you with regard to the transactions?

A. He asked me—there was no five trucks, but only three trucks. I started to answer him because I didn't know what was going on. The only thing is, he walked into the place and he says, "Mr. De

(Testimony of Ed De Bon.)

Bon?" I says, "Yes." He says, "You know you are in trouble?" And I answered back, "Not that I know of."

Q. Did you ever know Mr. Hildebrand prior to July of 1946?

A. Never met the man; never knew him.

Q. At the time you met him in July of 1946, or around about July 8 thereof at the War Shipping Administration, did he tell you who he was connected with at the time? A. No, he didn't.

Q. Was he with the War Assets Administration at the time? A. No, he didn't tell me.

Q. Are you acquainted with a number of the officials there, or were you at the time?

Mr. Bonsall: Objected to as immaterial.

The Court: Objection overruled.

Q. (By Mr. Tramutolo): What is the answer?

A. I am.

Q. You are? [128]

A. Yes, I am acquainted.

Q. Now, Mr. De Bon, of the trucks that you obtained from Mr. Hildebrand, did you dispose of those trucks?

Mr. Bonsall: Objected to as immaterial.

The Court: Sustained.

Mr. Tramutolo: I may have asked this question, your Honor, and I would ask your Honor to be indulgent if it is repetitious.

Q. Did you ever have any meeting to discuss the purchase of this property with Mr. Hildebrand and Mr. Csaki and yourself? A. Never.

Mr. Tramutolo: That's all.

(Testimony of Ed De Bon.)

Cross-Examination

By Mr. Bonsall:

Q. Mr. De Bon, did you see this gentleman who happens to be standing here now before? Did you ever see him before?

A. Not that I remember.

Q. That is Mr. Dillon of the FBI. Did you ever see him before?

A. Yes, I believe I did, now. It seems to me he was huskier then. He was heavier then. Now I can recall him.

Q. Was this man you had the discussion with in January of 1947 regarding this case?

A. Can I ask him if he was stouter then? Were you stouter at that time? Were you heavier then?

Mr. Dillon: No.

The Witness: He looks not as stout as then. He looked [129] to be a bigger man than he is now.

Q. (By Mr. Bonsall): Do you recall Mr. Dillon asking you if you had paid Mr. Csaki or Mr. Hildebrand in connection with the Chevrolet trucks and White trucks? A. Yes.

Q. As a matter of fact, that you told Mr. Dillon first you hadn't paid any money to either of these gentlemen?

A. No. I told him I paid them a small amount of money.

Q. I said at first.

A. I told him at first that I did not remember what I paid, but I paid between 25 and 50 dollars.

(Testimony of Ed De Bon.)

Q. After while, do you recall telling him whether you may have paid them a small sum for their services to cover their expenses, possibly 25 or 50 dollars?

A. That's right.

Q. And that you told him that the total amount that you had paid Mr. Hildebrand at the time would not exceed \$150 all told? Do you recall that?

A. There was only two truckloads.

Q. Well, answer the question if you can.

A. Probably I did.

Q. Well, did you or didn't you? A. I did.

Q. You now say you paid \$570 for this White trucks?

Mr. Tramutolo: I think his testimony was \$580. [130]

Mr. Bonsall: Yes.

The Witness: He asked me, all the trucks like that which you want——

The Court: Well, just answer the question. How long have you been engaged in the automobile business?

A. I should say off and on for 30 years.

Q. You are pretty well familiar with the way the automobile business is carried on in its several branches, aren't you? A. Right.

Q. And you are pretty well familiar with how property is acquired from the War Shipping Administration, are you not? A. Yes.

Q. Have you paid any—Strike that out. You wanted these trucks, did you?

A. I told the man that I could use them.

(Testimony of Ed De Bon.)

Q. Now, I show you these two brochures, Government Exhibit 11, first, and I ask you if you saw that when you were at the War Assets Administration office on July 8, or a similar copy.

A. I couldn't say that I did or did not. I couldn't recall.

Q. In picking out the Chevrolets that you refer to, did you pick them out of any book of this kind?

A. No.

Q. Do you deny that these books were before you on July 8?

A. You asked me about the Chevrolet. Now, let us finish that.

Q. I am talking about the Chevrolet. [131]

A. Well, I didn't pick it out.

Q. You didn't pick it out?

A. Absolutely not.

Q. Who did pick it out?

A. I couldn't tell you.

Q. You wanted these Chevrolets, didn't you?

A. I did not.

Q. You didn't want them?

A. I told him if they were there and he could not use them I would buy them, but not that I was looking for them.

Q. Then I show you this other brochure, marked Government Exhibit 12, and ask you if on the 8th of July you consulted a pamphlet similar to that in connection with picking out the White trucks.

A. I may have seen it. I wouldn't say I had it in my possession.

(Testimony of Ed De Bon.)

Q. Isn't it a fact you opened up and found out the tag numbers of some White trucks from one of these books similar to this?

A. No, I did not because I knew I couldn't buy under that book.

Q. You knew you couldn't buy from this book?

A. I knew that.

Q. You say you didn't see these books?

A. I couldn't say.

Q. On that day, July 8, did you see either of these books or similar ones?

A. I probably have. [132]

Q. Would you say yes or no? A. Yes.

Q. Would you deny that you looked inside these books to secure the tag numbers of the respective Chevrolets and White trucks?

A. I will deny that.

Q. When you obtained those Chevrolets, didn't you realize that Csaki's priorities were being used?

A. No, I didn't.

Q. In connection with the White trucks, didn't you know that Csaki's priorities were being used?

A. I didn't.

Q. Didn't you think it was strange on the 27th that Oscar Csaki, Hildebrand and yourself were together and it was necessary for Mr. Csaki to execute these documents in connection with the purchase and delivery of the bills of sale to you?

A. On what date?

Q. On July 27, 1946.

A. I didn't see Mr. Csaki, or either one on the 27th. I didn't see either one.

(Testimony of Ed De Bon.)

Q. I should have said the 24th, just in regard to those White trucks: Didn't you think it was strange that Oscar Csaki, Hildebrand and yourself were together and these papers were executed by Csaki to you; didn't you think then that somebody's priorities were being used?

A. I didn't know it. I thought I was doing business with a [133] dealer where I could buy from one dealer to another, like we do every day.

Q. But I asked you if you didn't think that somebody's priorities were being used.

A. I did not.

Q. On July 9 did you receive the bill of sale from Csaki to yourself for the Chevrolet? A. Yes.

Q. Did you notice that Csaki's name was in there as a grantor? A. Yes.

Q. Didn't you think that was strange?

A. No.

Q. Didn't you think some person's priorities had been exercised in securing that?

A. I did not.

Q. You knew both these sales were on priorities?

A. Yes.

Q. Did you know that one of them was restricted to veterans alone? A. Or veteran dealers.

Q. Didn't you know that the other one was practically—Withdraw that. Didn't you know that from June 24 to July 12, the sale at which the White trucks were being purchased was on the date you made your application and was limited to veterans of World War II? Didn't you know that? [134]

A. I did not.

(Testimony of Ed De Bon.)

Q. Why did you pay Mr. Hildebrand in cash and not by check for his services?

A. Well, he probably needed the money and I figured he could use the cash instead of taking a check, not being acquainted and not being able to get the check cashed, and I had that amount of money and I could give it to him.

Q. Did you withdraw \$500 from the Bank of America on July 24, 1946?

A. I probably did; I couldn't remember.

Q. Well, I will show you what purports to be a cashier's check drawn on the Bank of America, dated July 24, 1946, No. 2818883, "Pay to the Order of Ed De Bon \$500," cashier's check. That was on the same date you received these three other cashier's checks.

A. Probably so. I couldn't recall it. I cash checks all the time.

Q. Was that where you got the \$500 with which to pay Hildebrand?

Mr. Tramutolo: Just a moment. Is that dated July 26?

Mr. Bonsall: No, July 24, 1946.

Mr. Tramutolo: I thought you said July 26.

Mr. Bonsall: I said July 24.

The Witness: Probably I did.

Q. (By Mr. Bonsall): As a matter of fact, don't you know that was where you obtained the \$500 cash that was paid to Mr. [135] Hildebrand?

A. I couldn't swear to that. I always carry five or six or eight hundred dollars cashier's checks daily. I meant I cashed the check.

(Testimony of Ed De Bon.)

Q. You cashed this check made out to yourself, did you? A. Yes, I suppose I did.

Q. You needed the \$500.

A. I can't recall if I did or not.

Q. Do you recall this is some of the money you paid Mr. Hildebrand? A. That's right.

Mr. Bonsall: I ask that be admitted in evidence.

The Court: So ordered.

Mr. Tramutolo: Of course, my objection is, your Honor, that it concerns nothing brought out on direct examination and therefore is not proper cross-examination.

The Court: Objection overruled.

Mr. Tramutolo: I make no objection so far as that is concerned, but I say it is not proper.

The Court: Reference was made, Mr. Tramutolo, to the cash payments. This is proper cross-examination and the witness admits this check went through and was diverted into the cash.

(Check referred to was marked Government 19 in evidence.)

Mr. Bonsall: No further questions.

Mr. Tramutolo: That's all. [136]

Mr. Tramutolo: Your Honor, I would ask for a short adjournment. I am asking two character witnesses who are here in town to testify. I did not anticipate we would finish at this time and I asked them to be here at 3:30. I had two other character witnesses from Eureka which I am willing to not call, and call only the two witnesses from San Francisco who will be here, as I say, at 3:30.

(Testimony of Ed De Bon.)

Mr. Bonsall: I will stipulate the witnesses who would be produced would testify this man was of good character. If they were here they would so testify.

The Court: Mr. Tramutolo may wish to devote additional time to these witnesses. Will you accept the stipulation?

Mr. Tramutolo: I will accept the stipulation and I will state the people I am calling, their names, so you may know who they are.

Mr. Bonsall: I would not want to go further. I am willing to make the stipulation as I have stated.

The Court: Will these witnesses be here presently?

Mr. Tramutolo: Two of them will, your Honor.

Mr. Bonsall: I had in mind putting on a rebuttal witness out of order.

The Court: Have you concluded, Mr. Tramutolo, other than your character witnesses?

Mr. Tramutolo: Yes, your Honor.

The Court: By the way, Mr. De Bon, may I ask one question: [137]

Q. In connection with these cash payments you made to Hildebrand, how did you account for those cash payments?

A. We charged them against expense.

Q. You charged them against expense?

A. Yes, we charged them against expense of each truck, when we sell it, of each unit. I will charge it against expense, against the selling expense of the truck, or repairing. We charge it against that said truck.

(Testimony of Ed De Bon.)

Q. One further question: When Csaki came into the transaction, as it then appeared he was then on the bill of sale, did you make any protest to Hildebrand or Csaki?

A. I thought they were in partnership as a dealer.

Q. You thought they were in partnership?

A. Yes.

Q. Did Hildebrand ever represent to you that Csaki was his partner?

A. No, but he told me he had a partner, but I didn't know who he was and never met him until that day when I made final payment.

Q. So you had no discussion when the bill of sale was passed over? A. No.

Redirect Examination

By Mr. Tramutolo:

Q. Mr. De Bon, when you purchased this merchandise, did you enter it in your books at Eureka?

Mr. Bonsall: That is immaterial.

The Court: I assume he keeps books of account.

The Witness: Yes, sir.

Q. (By Mr. Tramutolo): Did you make entries of the purchase of these trucks? A. Yes.

Q. And the cost of reconditioning them?

A. Yes.

The Court: Ladies and gentlemen of the jury, at the suggestion of Mr. Tramutolo at the outset of the testimony of Mr. De Bon, he informed the jurors

they might interrogate the witness through the Court. Have any of you ladies or gentlemen any questions to ask?

Very well, no questions.

WILLIAM B. DILLON

called as a witness in behalf of the Government in rebuttal, sworn.

The Clerk: Will you state your name to the Court?

A. William B. Dillon.

Direct Examination

By Mr. Bonsall:

Q. What is your occupation, Mr. Dillon?

Mr. Tramutolo: If your Honor please, in view of the admonition of the exclusion of witnesses, Mr. Dillon is not qualified to testify in view of that admonition.

The Court: There was the exception noted with respect to [139] the agents, Mr. Tramutolo.

Mr. Tramutolo: One agent, Mr. Kennedy, the one that was sitting behind Mr. Bonsall.

The Court: That was not my understanding.

Mr. Tramutolo: I submit that whatever your Honor thinks is all right, and it is fair and I have no quarrel with your Honor on that.

The Court: Ordinarily the exclusion of witnesses does not operate on the immediate agents.

Mr. Tramutolo: I didn't know this agent was here when this was testified to.

(Testimony of William B. Dillon.)

The Court: I assume this testimony will be directed to the conversation had at Eureka?

Mr. Bonsall: That is correct.

The Court: All right. Proceed.

Q. (By Mr. Bonsall): Mr. Dillon, what is your occupation?

A. I am a special agent of the Federal Bureau of Investigation.

Q. Have you ever seen this defendant, Ed De Bon, before? A. Yes.

Mr. Bonsall: Will you stipulate the witness identifies the defendant?

Mr. Tramutolo: Yes.

Mr. Bonsall: Where did you see him?

A. I talked with him at Eureka and at his place of business.

Q. When? [140]

A. On February 3 of this year, 1947.

Q. Who was present?

A. Mrs. De Bon.

Q. You will state the substance of your conversation with Mr. De Bon at the time, what you said and what he said.

A. Well, there was a rather lengthy conversation. I introduced myself to him. I showed him my credentials and told him I would like to inquire into some transactions with regard to trucks purchased through the War Assets Administration and proceed to the vehicles which he had purchased. He asked me what was wrong and I told him I didn't know there was anything wrong but I wanted to

(Testimony of William B. Dillon.)

talk over these transactions with him. I asked him then for data concerning his dealings with Oscar Csaki and John Hildebrand and he related first—well, we proceeded in an orderly manner which was where he had met them. He told me he met Mr. Hildebrand in San Francisco at a service station near the corner of Van Ness and Eddy. It was a chance meeting, that both were driving Buicks and both came in to have their cars greased and they met there. They conversed there just because of the two automobiles being of similar make. I then asked him where he met Csaki and he said he met Csaki in a restaurant on Van Ness Avenue. He was asked when these meetings occurred, and he said they occurred during the spring of 1947 and when he was asked to be more definite he said, "Some time between March and May." He was then asked if he had [141] purchased——

Mr. Tramutolo: Pardon me, Mr. De Bon, is that 1947?

The Witness: The spring of 1946, between March and May. He was then asked if he had purchased any vehicles through these two individuals, Csaki and Hildebrand, to which he replied that he had, that he had bought four vehicles. I asked him from whom he purchased the vehicles, from which veteran and he said he couldn't remember, but he thought he had purchased two vehicles from each veteran. He was then asked if he had paid the veterans anything for the use of their priorities and

(Testimony of William B. Dillon.)

he replied no, that he had paid them absolutely nothing. He was questioned a little more in detail about this remark and then he said, "Well, perhaps I did pay them something—not very much, fifty to a hundred dollars—not over a hundred dollars."

Up to that time the conversation had been of a rather general nature. He was then asked specifically regarding transactions occurring on July 8 and at that time he knew that I knew that cashier's checks had been procured by him.

He then said, "Pardon me, there was the Chevrolet truck," that I had asked him about and it was for that Chevrolet truck that the cashier's check in the amount of \$1100-odd was issued, and it was in addition to the telephone truck, the Chevrolet telephone truck, for which he paid \$2200-and-some-odd, and then he elaborated on the transaction.

He was then requested to state if he had made any [142] commitments to the veterans with regard to what they were to receive when these vehicles were purchased and again he said he had not made any. He then said he paid them twenty or thirty dollars each to cover their expenses only, that they had gone to either Stockton or Sacramento or both to the War Assets depots where these vehicles were parked, to examine them, and he was reimbursing them only for their expenses, and that they were of a minor character and in the total they would not exceed \$150, and he repeated that on two or three occasions.

(Testimony of William B. Dillon.)

He was then asked to produce his records regarding the purchase of these vehicles and with the help of Mrs. De Bon he was successful in locating two sheets of material such as is printed by the War Assets Administration dealing with the purchase of two of these vehicles. My recollection now is that they were both with respect to two Chevrolet trucks.

Mrs. De Bon was making a check of the records at his request, and found records were not there. He was then asked to produce his records regarding the checks with which these were purchased inasmuch as he had told me he had purchased these vehicles with checks drawn on his account in the Eureka branch of the Bank of America. Mrs. De Bon located a reference to a charge in the sum of approximately \$1100 against their account, and she questioned the propriety or description of anything further from the check records, and I was not shown anything further from the check records. [143]

We went over the story in its entirety again and at that time I asked Mr. De Bon if it was true and he stated it was. I asked him then if he would prefer that I typed it so that he could affix his signature after he read it over. He first said it was true but he was not going to sign anything. He then said, "If you want to type it up, go ahead."

The wife borrowed his typewriter and I typed about half a page of legal cap paper. Mr. De Bon was reading over my shoulder at that time and he then said, "That is enough. I am not going to sign anything. Besides, where is my copy?"

(Testimony of William B. Dillon.)

At that time he terminated the conversation indicating he had a lot of business and that was the end of our conversation.

The conversation took place at his place of business in Eureka on the afternoon of February 3rd and commenced at about 3:45, and I believe it was terminated about 5:00 or 5:15. During the course of our conversation he was interrupted from time to time with business dealings. People came to the door. Some of his mechanics came to the door and he had to converse with them from time to time.

Mr. Bonsall: Your witness.

Cross-Examination

By Mr. Tramutolo:

Q. Mr. Dillon, wasn't the reason that Mr. De Bon would not sign a statement which you were in the course of preparing, that you would not make a copy for him?

A. No, that isn't true. When he said, "Go ahead and type it," [144] I borrowed his typewriter which was there on the desk and turned it around so I could use it, and placed a piece of paper in the typewriter. He didn't offer any carbon copy or any means by which I could make a copy. And I had no such equipment with me. I typed about half a page before any objection was made about his copy. That remark was made just after he said, "Just a minute, I won't sign anything. Where is my copy?"

(Testimony of William B. Dillon.)

Q. In other words, he wanted a copy of what you were typing?

A. Perhaps he did. He said, "Where is my copy?"

Q. Did you interview any of his employees up there, Mr. Dillon?

Mr. Bonsall: I object to that as immaterial.

The Court: It is immaterial, Mr. Tramutolo.

Mr. Tramutolo: He was up there making investigations.

The Court: He might answer to the end that the jury gets all the facts.

The Witness: I arrived at this place of business, I should say, at about 3:00 o'clock or shortly before 3:00. I inquired in the display room of his place of business and was directed to the office. I entered the office and there was a woman sitting there and I asked for Mr. De Bon. She wanted to know what my business was and then she informed me that she was Mrs. De Bon, that he was downtown at the bank, I believe, which was about 3:00 o'clock, and that he would be back. I waited. During the course of the wait, I strolled about his shop and [145] conversed informally with the employees about the work they were doing, but nothing about this case. I did converse with Mrs. De Bon from time to time, but it was just small talk.

Q. (By Mr. Tramutolo): What I was trying to arrive at, Mr. Dillon, was, do you know that he has in his employ approximately ten veterans of World War II?

Mr. Bonsall: That is immaterial, it seems to me, and is objected to for that purpose.

The Court: It is immaterial. I sustain the objection.

Mr. Tramutolo: That's all.

Mr. Bonsall: That's all.

Mr. Tramutolo: Will your Honor permit me to put Mr. De Bon back on the stand for one further question?

ED DE BON

recalled as a witness on behalf of the defendant in rebuttal, previously sworn.

The Clerk: The witness on the stand is Ed De Bon, heretofore sworn.

Direct Examination

By Mr. Tramutolo:

Q. How many employees have you at Eureka?

Mr. Bonsall: Objected to as immaterial.

The Court: Objection overruled. You may answer.

The Witness: 14, 15 or 16 at different times.

Q. (By Mr. Tramutolo): How many of those employees are veterans of World War II? [146]

Mr. Bonsall: Objected to as immaterial.

The Court: Sustained.

Mr. Tramutolo: I ask that be permitted to be answered.

The Court: What is the theory upon which you are asking that question?

(Testimony of Ed De Bon.)

Mr. Tramutolo: First, if he wanted to act illegally, he has employees of his own who are veterans.

The Court: I sustain the objection.

Mr. Tramutolo: That is all.

Mr. Bonsall: That is all.

PATRICK JOHN KELLY

called as a witness on behalf of defendant, sworn.

The Clerk: Will you state your name to the Court and jury?

The Witness: Patrick John Kelly.

Direct Examination

By Mr. Tramutolo:

Q. Mr. Kelly, where do you reside?

A. 2345 Wawona.

Q. That is in San Francisco?

A. San Francisco, yes, sir.

Q. How long have you resided in San Francisco,

Mr. Kelly? A. 60 years.

Q. What is your business?

A. Service station attendant, Union Oil dealer.

Q. I didn't get the last.

A. Union Oil dealer.

Q. Union Oil service station? A. Yes.

Q. How long have you been in that business?

A. Three years and a half.

Q. What was your business previous to that?

A. I was 30 years in a garage at Van Ness and Eddy.

(Testimony of Patrick John Kelly.)

Q. Are you acquainted with the defendant in this case who is seated behind me, Mr. De Bon?

A. Mr. De Bon, yes.

Q. How long have you known Mr. De Bon?

Mr. Bonsall: I object to that until the proper foundation is laid.

The Court: Objection overruled.

Q. (By Mr. Tramutolo): How long have you known him?

A. In the neighborhood of 12 or 15 years. He was a customer in the garage.

Q. He was doing business with you?

A. Yes.

Q. Do you know his general reputation, Mr. Kelly, for truth, honesty and integrity?

Mr. Bonsall: I object to the form of the question.

The Court: Overruled.

The Witness: Well,—

Q. (By Mr. Tramutolo): Just answer yes or no. Do you know [148] his general reputation for truth, honesty and integrity?

A. Yes.

Q. It is good or is it bad?

A. Good.

Mr. Tramutolo: That is all.

Cross-Examination

By Mr. Bonsall:

Q. Have you ever visited Eureka?

A. No, sir.

Q. Are you acquainted with Eureka?

A. No, sir.

(Testimony of Patrick John Kelly.)

Q. Have you ever talked with any people living in Eureka about Mr. De Bon?

A. No, sir.

Mr. Bonsall: That is all.

Redirect Examination

By Mr. Tramutolo:

Q. You have talked with Mr. De Bon and you have talked with people who know him?

A. Oh, several times. I have several friends who are now dead who were in the garage when he was there.

Q. Did you ever hear him accused of being dishonest?

Mr. Bonsall: I object to that as improper.

The Court: Technically it is improper.

Mr. Bonsall: I will withdraw the objection.

The Court: But I think it should be overruled.

Q. Have you ever heard anything said about him in the negative [149] form, that he was charged with a crime?

A. During the years when he was in the garage business, he owed money to me, considerable money from time to time, and I never had any trouble collecting it.

Mr. Tramutolo: That is all.

Recross-Examination

By Mr. Bonsall:

Q. Did you ever hear of him being in trouble with anybody?

(Testimony of Patrick John Kelly.)

A. No, I couldn't because I have lost contact with him for some time.

Q. How long?

A. About three and a half years.

Mr. Bonsall: That is all.

Mr. Tramutolo: That is all.

The Witness: May I go now, Judge?

The Court: Yes.

The Witness: Thank you.

The Court: Ladies and gentlemen of the jury, we will take a recess now until 3:30.

May I again admonish you not to discuss this case among yourselves nor suffer or permit any person to converse with you on any subject of this trial, and not to form or express any opinion until the case is finally submitted to you.

(Recess.) [150]

Mr. Tramutolo: Stipulated the jurors are present.

Mr. Bonsall: So stipulated.

Mr. Tramutolo: Just after you adjourned Dr. Brumback appeared.

JAMES J. BRUMBACK

called as a witness on behalf of defendant; sworn.

The Clerk: Will you state your name to the Court and jury?

The Witness: James J. Brumback.

The Clerk: Will you spell the last name?

The Witness: B-r-u-m-b-a-c-k.

(Testimony of James J. Brumback.)

Direct Examination

By Mr. Tramutolo:

Q. What is your profession?

A. Dentist.

Q. Dentist? A. Yes, sir.

Q. And where do you reside, Dr. Brumback?

A. My home or office?

Q. Your home.

A. 21 San Benito Way, St. Francis Wood.

Q. And your office is located in San Francisco?

A. 964 Market.

Q. How long have you been a practicing dentist here in San Francisco?

A. About seventeen years. [151]

Q. Doctor, are you acquainted with Mr. Ed De Bon, the defendant in this case?

A. Yes, sir; yes, sir.

Q. How long have you known him?

A. About 25 years.

Q. And that acquaintance exists up to the present time? A. Yes, sir.

Q. Have you had any business dealings with Mr. De Bon? A. Yes, sir.

Q. Do you know of his general reputation, Doctor, for truth, honesty, and integrity?

A. I do.

Q. Is it good or bad, Doctor? A. Good.

Mr. Tramutolo: That's all.

(Testimony of James J. Brumback.)

Cross-Examination

By. Mr. Bonsall:

Q. Did you know Mr. De Bon in Eureka at any time?

A. Oh, yes, I knew Mr. De Bon before that.

Q. Have you seen him in Eureka recently?

A. I see him every month.

Q. My question was, how frequently you have seen him in Eureka.

A. I saw him in Eureka in October.

Q. Of last year? A. That's right. [152]

Q. And prior to that, when did you see him in Eureka?

A. I have just seen him the once in Eureka. He visits my office in San Francisco quite often.

Q. I am still speaking of Eureka. I want to keep it clear. A. Just once in Eureka.

Q. In the last five years how often have you seen him in Eureka, just roughly?

A. Just once in Eureka.

Q. How long were you there at that time?

A. About two or three days.

Q. Did you talk about him with anyone there?

A. Yes, I have a very good friend there, Dr. Simpson, who is also a friend of Mr. De Bon.

Q. Did you ask your doctor friend what his reputation was at that time?

A. Well, this individual——

Q. Just answer "Yes," or "No."

A. I didn't ask him, no.

(Testimony of James J. Brumback.)

Q. Did you ask anybody what his reputation was in Eureka?

A. I wasn't inquiring about his reputation.

Q. Just answer my question if you can. I think it is clear.

A. No, I didn't ask anyone.

Mr. Bonsall: That's all, Doctor.

Redirect Examination

By Mr. Tramutolo:

Q. Doctor, you have discussed at various [153] times, have you not, Mr. De Bon's reputation?

A. Why, yes.

Mr. Bonsall: Just a moment. I think it should be limited to the place of his residence.

Mr. Tramutolo: I doubt that, your Honor. I think your Honor has already ruled.

The Court: I have ruled on that. I am willing to allow latitude. I think latitude should be allowed.

Q. (By Mr. Tramutolo): Did you ever hear anything ill about his honesty or character?

A. No, I never have.

Q. You always heard him well spoken of?

A. I certainly have.

Mr. Tramutolo: That's all.

Mr. Bonsall: No further questions.

Mr. Tramutolo: Your Honor, that completes our case. Mr. Bonsall has agreed that the other witnesses I was bringing from Eureka need not come, and I do not desire to delay the trial, as Mr. Bonsall will stipulate that if they were here

they would testify that his general reputation for truth, honesty and integrity were good.

Mr. Bonsall: I would so stipulate.

Mr. Tramutolo: That completes our case.

The Court: Have you any further evidence?

Mr. Bonsall: No further evidence. [154]

The Court: The evidence now stands submitted?

Mr. Bonsall: It does, your Honor.

Mr. Tramutolo: Now, if your Honor please, may I ask that the jury be excused?

The Court: And I assume then you will desire to take an adjournment?

Mr. Tramutolo: That is right.

The Court: Ladies and gentlemen of the jury, the evidence has been completed in this case. The next step in the trial thereof will be the arguments tomorrow morning at ten o'clock. Therefore, this court will recess this particular case until tomorrow morning at ten o'clock. Court will stand adjourned as to this case until tomorrow morning at ten o'clock, save and except for the arguments of a legal character. You may retire until ten o'clock tomorrow morning.

(Thereupon the jury withdrew from the courtroom, and the following proceedings were had:)

Mr. Tramutolo: Your Honor, following the procedural custom and requirements, I made a motion for a directed verdict of acquittal following the close of the Government's case, and it is the custom and required, as I take it, by the rules of court, to follow that when all of the testimony is in, and

I now ask that your Honor regard the statements I made heretofore with all of the testimony in, that a verdict of not guilty, a [155] directed verdict of not guilty, be given to the jury.

The Court: As to all counts?

Mr. Tramutolo: As to all counts.

The Court: Motion denied.

Mr. Tramutolo: And an exception may be noted?

The Court: Yes.

Mr. Tramutolo: There is a Federal official to a great department that I had the honor of being with for some time, and they are dedicating a new stamp at the Auditorium at 4, and I would ask your indulgence. Of course, we have finished this case much sooner and I would appreciate it if your Honor would consider it.

The Court: I think in view of the efforts of both counsel to hasten this trial, the request comes very timely.

Mr. Tramutolo: With your assistance, I think it went along very fast.

The Court: Under the rule, it is the obligation of the court to discuss instructions with you in advance, at least to indicate to respective counsel the instructions that I will give, so that you may be prepared to take whatever exceptions you may have, and your instructions were submitted at noon. I will go over them late this afternoon and indicate to counsel in advance of further trial tomorrow morning, let us say at—Mr. Mitchell, have we a calendar at 9:30?

The Clerk: No, your Honor, it starts at ten.

The Court: I will indicate tomorrow at a quarter to ten, so you may be guided in the course of your arguments.

Mr. Tramutolo: That will be very helpful, your Honor. With that indication we know how to argue.

The Court: At a quarter to ten in open court I will indicate to counsel the instructions I propose to give, as suggested by respective counsel, together with such supplemental instructions as I may desire.

Mr. Tramutolo: I handed those in this morning as you indicated, by ten o'clock. I did not know they had not been handed to you. A copy was given to Mr. Bonsall and the original to Mr. Mitchell.

The Court: They are in. There is no question about the time. We will adjourn until tomorrow at ten o'clock.

(Thereupon at 3:42 p.m. an adjournment was taken until tomorrow, Thursday, July 31, 1947, at ten o'clock a.m.) [157]

Thursday, July 31, 1947, 1:30 o'Clock P.M.

The Clerk: United States of America vs. Ed De Bon, on trial.

The Court: Is it stipulated that the jurors are present, gentlemen?

Mr. Bonsall: Yes.

Mr. Tramutolo: On behalf of the defendant, your Honor, it is.

The Court: Ladies and gentlemen of the jury, it is now the province and duty of the court to in-

struct you as to the law of this case. I am mindful that this is your first criminal case in which you have participated as jurors, and you may recall that when you were impaneled by this court in the first instance as jurors, I then admonished you as to your duties under the law. I admonished you in addition as to the burdens upon you, particularly in a criminal case; the burden on the court, as well as on counsel and as well as on the jurors, is a great burden. However, it is our duty. You have assumed the duty, and we expect you to discharge it in accordance with the facts as elicited through the witnesses, and in accord with the law as announced by this court.

The court and the jurors, in a certain fashion, operate as a team. You determine the facts, pass upon the credibility of witnesses, and the like, and the court is concerned only [159] with the law of the case.

At the very threshold, I desire to indicate very definitely to you that with respect to the attitude of the court in this case in the interrogation of any witness or witnesses, or any comment the court may have made, either directly or indirectly, or inferentially, you are not to regard any such conduct as indicating on the part of this court any view with respect to the guilt or innocence of the defendant. On occasions, it is the duty of this court, or any other court, to elicit all of the facts, and if the court believes that the facts have not been developed, it is the obligation of the court to bring out those facts.

In connection with the instructions as I give them

to you, it is your duty not to consider one isolated instruction, but to regard all of the instructions as a whole, rather than to accept one individual statement of the law.

It is your duty exclusively, and it is your province exclusively to review the facts and to pass upon the evidence, and in that respect you are the sole judges; you are untrammelled in that respect, and this court is without either obligation or function in that regard.

Now, I announced to you on your impanelment in this case that the mere fact that an indictment or true bill had been brought against the defendant at bar, or any other person, is not to be considered by you as evidence of the [159] defendant's guilt. The indictment, as I have indicated, is merely a legal accusation charging the defendant with the commission of an alleged offense. It is not to be considered by you as evidence in the case, that is, the charging part of the indictment, be it in the first count, the second count, or the third count, or any of the overt acts alleged in the so-called first count or not, nor is any of them, to be considered by you as evidence against the defendant. As I announced to you, the indictment, or complaint, or information is merely the skeleton, and as you build a house, you must superimpose the structure thereon, to wit, bricks, and as I have indicated to you, the bricks represent the evidence, and without the evidence the superstructure must fall.

Now, from an elemental viewpoint, the defendant is presumed to be innocent of the crime charged

against him. This presumption of innocence attaches at the very beginning of the trial. It has the weight and effect of evidence in the defendant's behalf, and continues to operate at all stages of the trial, not at the first or initial stage only, but at all stages of the trial, and when you finally retire to the jury room to deliberate upon a verdict, it becomes your duty to consider the evidence introduced in this case in the light of the presumption of innocence. This presumption is sufficient in and of itself to acquit any defendant charged with a crime, unless it is overcome by evidence that satisfies your mind to [160] a moral certainty and beyond a reasonable doubt of the guilt of the defendant, and unless you, and each of you, are satisfied it is your duty to find the defendant not guilty.

It is not necessary for the defendant to prove his innocence, under our standards of justice; the burden rests upon the prosecution to establish every element of the offense with which a defendant is charged, to a moral certainty and beyond a reasonable doubt.

Now, what is reasonable doubt? Reasonable doubt is not a fiction in the law. It is a doubt resting upon the judgment and reason of him who conscientiously entertains it from the evidence in the case. There is nothing whimsical about it, or fanciful. It is doubt based on reason. By such doubt is not meant every possible or fanciful conjecture that may be suggested or imagined, but a fair doubt based on reason and common sense, and growing out of the testimony in this case.

Reasonable doubt is that state of the case which, after the entire comparison and consideration of all the evidence in the case, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge.

Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and accompanying all the instructions that are given to [161] you by the court.

You must also remember, ladies and gentlemen of the jury, that the defendant is entitled to any reasonable doubt you may have in your minds, but at the same time, remember also that if you have no such doubt the Government is entitled to a verdict.

Now, circumstantial evidence is a category, in the sense that there are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of a crime. One is direct or positive testimony, that is, by an eyewitness, to the commission of the crime, and the other is proof in evidence of a chain of circumstances pointing sufficiently strongly to the commission of the crime by the defendant, and which is known as circumstantial evidence.

The law in regard to circumstantial evidence is this: In order to justify a jury in finding a verdict of guilty based on circumstantial evidence, the facts and circumstances must not only be consistent with

each other and with the guilt of the defendant, but they must be inconsistent with any reasonable theory of the defendant's innocence that can be predicated on the evidence, and must show the defendant's guilt beyond a reasonable doubt. In other words, not only must each fact relied upon to show guilt be proved beyond a reasonable doubt, but such fact must be consistent with all the other [162] facts introduced in the chain of circumstances, and must further be inconsistent with any other rational conclusion than that of the guilt of the defendant.

Now, as to the credibility of witnesses, there are certain standards or tests that are uniformly applied in a determination of credibility. First, a witness is presumed to speak the truth. This presumption may be repelled or rebutted by the manner in which the witness testifies, by the character of his testimony, or by contradictory evidence.

You should carefully scrutinize the testimony given, and in so doing, consider all of the circumstances under which the witness has testified, his demeanor, his manner while on the stand, his intelligence, the relationship which he bears to the Government or to the defendant, the manner in which the witness might be affected by the verdict, and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If you find that the presumption of truthfulness attaching to the testimony of any witness has been repelled or rebutted, then you will give the testimony of such witness such credibility, if any, as you may think it entitled to.

Now, with respect to minor discrepancies and an attempt on your part to rationalize upon discrepancies; very often in the trial of a case, and without dwelling on the evidence [163] in this case, there may or may not be discrepancies between one witness's testimony and that of another. You should determine whether or not such discrepancies or inconsistencies or such points of difference affect the true or essential issues in the case. Examine such discrepancies or inconsistencies and such disputed points and ask yourselves these questions: "How does the decision of this, or that, or the other discrepancy or matter in dispute affect the guilt or innocence of the defendant?"

Regardless of what may be the truth concerning such discrepancies or inconsistencies, ask yourselves the main question: "Did or did not the defendant commit the charge or charges alleged in the indictment? Is such discrepancy or such disputed point material to establish the main and material issue, as to the guilt or innocence of the defendant?"

If they are not material, if the decision of the same is not necessary to enable you to arrive at the truth of the guilt or innocence of the defendant, then such discrepancies or disputed points are immaterial and minor matters, and you should waste no further time in their consideration.

The court cautions you to distinguished carefully between facts testified to by the witnesses and statements made by the attorneys in the course of their arguments or discussions on the evidence. If there is a variance between the arguments and facts, you

must, in arriving at your verdict, to the [164] extent that there may be such variance, consider the facts testified to by the witnesses, and you are to remember that the statements of counsel in their arguments or presentation to you are not to be considered as evidence in the case. The arguments of counsel represent their attempts to reconstruct and rationalize upon the evidence in order that their viewpoint, whether tenable or untenable, may be accepted by you.

Now, with respect to stipulations during the course of this trial, both counsel were very generous in the course of the trial in entering into stipulations with respect to facts, and you may recall that part, if not all, of the documentary evidence in this case went before the jury and the court as a result of stipulations, thus simplifying the trial and aiding the court, as well as the jury, in disposing of the case. Such stipulations represent fact, and you are to regard them as admitted facts with respect thereto.

Now, with respect to objections sustained by the court during the trial of the case, objections were sustained with respect to the introduction of evidence, and in connection with the subject-matter of any of those objections you are to disregard the evidence totally and fully, and that equally applies with respect to the court's granting of so-called motions to strike out evidence. Any evidence that has been stricken from this trial upon motion is to be disregarded by you in arriving at your ultimate verdict. [165]

As I have indicated to you, and as I pass on to further instructions, you are not to regard the instructions as isolated, in the sense that one instruction or another is to be considered by you. You are to consider the instructions as a whole.

Now, a witness may be impeached by the party against whom he is called, by contradictory evidence, by evidence that he has made at other times statements inconsistent with his present testimony; and if you believe that any witness has been impeached, then you will give the testimony of such witness such credibility, if any, as you may deem it entitled to.

If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury has a right to disregard such testimony and to distrust such witness in other particulars, and in that case you are at liberty to reject the whole of the witness's testimony, except in so far as he may have been corroborated by other credible evidence, or by facts and circumstances placed in issue on the trial.

The defendant, Mr. De Bon, has testified in his own behalf. That being so, you will determine his credibility according to the same standards applied to every other witness. These standards I have already indicated to you. You may also consider in this connection the interest the defendant may have in the case, his hopes and his fears, and what he has to gain or lose as a result of your verdict.

In every crime, and this is a crime or an alleged crime, [166] charged in the indictment, there must

exist a union or joint operation of act and intent, and for a conviction both elements must be proved to a moral certainty and beyond a reasonable doubt. Such intent is merely the purpose or willingness to take such action. It does not require a knowledge that such act is a violation of law. However, a person is presumed to intend to do that which he voluntarily or willfully does in fact do, and must also be presumed to intend the natural, probable and usual consequences of his act.

There is another preliminary matter, and that is that you jurors are not to concern yourselves with matters of punishment of the defendant in the event of a verdict of guilty. The matter of punishment is for the court alone. Your province is to determine the guilt or innocence of the defendant, and that is your exclusive province.

Now, the indictment in this case charges in three counts, first, the so-called conspiracy, and, secondly, a substantive offense, and in the third count a substantive offense. I will dwell upon the subject-matter of the indictment at additional length. However, I take it that as a result of the reading of the indictment to you at the very start of the case, as a result of the comments made upon the indictment by respective counsel, that additional comment on my part should seem unnecessary.

Each count—and a count is a charge—when we say [167] “count” we mean a charge—is to be determined by you as a separate and several charge against the defendant, Mr. De Bon, and according to such views as you may take of the evidence, it

is permissible for you to return a verdict of guilty against the defendant on one or more of the counts, and not guilty on another, or guilty on another of the counts and not guilty on one of the counts or all of the counts, as it may appear in the light of the instructions.

Now, basically, the defendant De Bon is charged with violating Title 18 of the United States Code, Section 88, in the first count. So that you may have the basic law in mind, Section 88 of the Criminal Code provides:

“Conspiring to commit offenses against the United States. If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished in the mode prescribed by law.”

That is the so-called basic conspiracy section, and it is with respect to that section that count 1 of the indictment is predicated.

Furthermore, you must have in mind that the alleged conspiracy has to do with an alleged violation of another section, and the other section reads as follows, that is, Section 80 [168] of Title 18, and so far as material it reads as I indicated, in part:

“Whoever shall knowingly and wilfully falsify or conceal or cover up by any trick, scheme, or device, a material fact, or make or

cause to be made any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States, or any corporation in which the United States of America is a stockholder, is guilty of an offense against the United States.”

Now, in substance, under count 1 it is alleged that the defendant, Ed De Bon, together with others, unlawfully, wilfully and knowingly conspired, combined, and confederated to violate the section which I adverted to recently. In connection with that conspiracy, certain overt acts have been set forth. The overt acts were read to you at the start of the case.

The overt acts, as I will indicate to you, may or may not be criminal in their nature. An overt act may be walking across the street, depositing a letter in a mail box, making a check, handing another person some money. Those are all overt acts which follow in the wake of the alleged conspiracy. But first the conspiracy must be proven to a moral certainty [169] and beyond a reasonable doubt.

Generally, in making or presenting a false certificate or claim, such a false certificate or claim is prohibited, whether made by one on his own behalf or that of another. The sole element of an offense under Section 80 that I recently read to you is the intentional presentation of such a false statement to a Federal agency, and no pecuniary loss to the United States or to any employee on a Government

project is essential. In other words, it is the false statement that is essential, and the fact that there may not have been any pecuniary loss to the Government is not a criterion.

The first witness produced by the Government detailed at more or less length to you the internal operations with respect to surplus commodities, indicated to you certain preferences that exist in favor of veterans, and the like. I daresay you have that testimony in mind.

Now, the philosophy underlying the Surplus Property Act of 1944, as promulgated by our Congress, was to afford returning veterans an opportunity to establish themselves as proprietors of agricultural, business and professional enterprises, and in the very nature of things we all must recognize the salutary effect of such legislation in order to provide returning veterans of World War II an opportunity to rehabilitate themselves in current economic warfare or current economic business affairs, and to assure the sale of surplus property in such quantities [170] and on such terms as will discourage disposal to speculators or for speculative purposes.

Under the Surplus Property Act a board was created in order to determine regulations in the very essentials. As we understand legislation, be it State or National—and I know you all have the general concept—the over-all legislation is promulgated and then it is incumbent to implement that legislation by rules and regulations, and in this instance Congress provided that a board shall be

created to establish and maintain the veterans with respect to their own small business, professional or agricultural enterprises, by affording the veterans suitable preferences to the extent feasible and consistent with the policies of the Act.

It is an admitted fact in this case that the defendant on trial, Mr. De Bon, did not have at the time and place in question as indicated in the indictment a veteran's preference unto himself.

Now, many of the States of the Union—and we must distinguish in the trial of the cases as between the State courts and Federal courts—as I may say, many of the States of the Union have statutes to the effect that no one can be legally convicted of a criminal offense on the testimony and evidence of an accomplice without independent corroborating evidence. There is no such Federal statute. Therefore, it is not legally essential that the testimony of any accomplice be corroborated [171] in order to authorize a conviction. However, the evidence of such accomplice ought to be received and considered with great care and caution. Nevertheless, if after a careful consideration and survey of the testimony of any accomplice you are convinced beyond a reasonable doubt of the guilt of the defendant, Mr. De Bon, you should not hesitate to bring in a verdict of guilty against the defendant.

I further charge you that whoever directly commits an act constituting an offense defined in any law of the United States, or whoever aids, abets, conceals, induces, or procures its commission, is a principal, and to be prosecuted and punished as

such. In other words, whoever directly does the thing that is a violation of law is a principal, as is also one who either aids, abets, conceals, induces, or procures the doing of an act or that act.

“Aid”—and I am defining these for you because the definitions are essential in the trial of this case—“Aid” means “to help, support, assist; one who helps or promotes in doing something; helper or assistant.”

“Abet” means “to instigate or to encourage by aid or countenance; or to contribute; as an assistant or instigator in the commission of an offense.”

It is essential to the guilt of a person charged with aiding and abetting the commission of a crime that such person's acts shall have contributed to the effectuation of the [172] offense. It is sufficient if it facilitated the result and rendered the accomplishment of the offense more easy.

Usually to aid and abet in the commission of an offense, the person rendering such aid or assistance is present to render support and confidence, but he may aid and abet even though absent.

A person who renders assistance, cooperation and encouragement in the commission of an offense is one who aids and abets in the commission thereof.

You are instructed further that it is not incumbent upon the Government to prove the precise date upon which the offense or offenses here alleged to have been committed were committed, it being sufficient for the purpose of this case that it is shown that the offense or offenses were committed within the past three years.

You will observe—and I admonish you to keep these elements in mind, because we are now coming into the conspiracy field—Mr. Tramutolo, during the course of his argument, in what might be regarded as a rather inelegant manner, stated that a conspiracy indictment was sometimes used as a barrel for the inclusion of many matters therein, and rather than have your minds confused on that score, when I say “inelegant” there is no reflection upon Mr. Tramutolo at all.

I should like you to pay particular attention to these elementals having to do with conspiracy, because it is not [173] difficult to understand. There are three essentials. First, there must be the act of two or more persons conspiring and confederating together, two or more. Second, it must appear that the purpose of the conspiracy was to commit an offense against the United States, that is, to violate some law of the United States; and third, one or more of the conspirators, after the conspiracy has been formed and during its existence, must do some act to effect the object thereof.

Now, each of these elements is an essential element of the crime charged, and must be established to your satisfaction to a moral certainty and beyond a reasonable doubt before you can find the defendant guilty. If these three elements are established, then the crime of conspiracy is complete, regardless of whether the purpose was accomplished or not.

The word “conspiracy,” as I indicated, is not difficult to understand. Of course, one person cannot conspire with himself, in the very nature of

things. It takes two or more persons to form a conspiracy. Whenever two or more persons act together understandingly to commit a crime, there is a conspiracy. It is of no consequence that there may be no proof of any spoken or written word of agreement between them. Agreements to commit crime are necessarily of a secret nature and usually difficult to discover, and it is generally necessary to prove them by proof of facts from which a jury may fairly and reasonably infer the existence of the agreement, itself. [174] It is seldom that express proof can be secured. They are ordinarily proved through proof of acts and conduct of two or more persons which show that they were cooperating and working together and in unison in furtherance of a common design and purpose of the criminal object. It is difficult, if not impossible, to secure express proof of such matters, and as I have indicated to you you may from the facts elicited in this case infer that a conspiracy existed, if you so find. A conspiracy may be proved by proof of facts from which it may be fairly inferred that the parties had a common objective, and that the act or acts done by each one of the parties, though the acts may be different in character, were all done in pursuance of a common end and calculated to effect a common purpose, and that the parties steadily pursued the same object, either by the same means or by different means, but all leading to the same result.

It is unimportant, ladies and gentlemen, when the conspiracy was formed or originated. It is sufficient to prove that during its existence and to

effect the object of it one of the alleged overt acts was committed within three years prior to the day the indictment was filed, and at some place within the jurisdiction of this court.

The alleged overt acts in this case were committed in San Francisco within the jurisdiction of this court.

It is immaterial whether the evidence varies from the [175] details of the indictment as to time, place, quantity or description. Dates do not have to be proved exactly as alleged in an indictment, but it is sufficient to prove any date within the period of time of three years before the indictment was returned.

Now, the overt acts alleged commence at page 3. In brief, defendants Csaki and Hildebrand jointly prepared a document known as a Veteran's Application for Surplus Property, intending the same for filing with the War Assets Administration, and that on or about March 27, 1946, in this City and County, defendant Hildebrand made certain entries on a document known as a Veteran's Application for Surplus Property. Then in paragraphs C, D, and E, in like manner the overt acts continue as illustrated.

He, on or about July 9, 1946, in the City and County of San Francisco, State of California, the defendant Ed De Bon paid to defendant John Steven Hildebrand the sum of \$50 for procuring and exercising a Veterans's Priority in purchasing a Chevrolet truck from the War Assets Administration.

On or about July 24, 1946, at the City and County of San Francisco, State of California, the defendant Ed De Bon paid the defendant John Steven Hildebrand the sum of \$400 for procuring and exercising a Veteran's Priority in purchasing three White trucks sold to defendant Oscar Csaki on the same date by the War Assets Administration. [176]

Now, as I have indicated to you, and I admonish you again, neither the reading of those overt acts by counsel or by the court is to be taken by you as establishing the fact thereof. You must believe from the testimony here that they have been established by credible testimony or not, but as I have indicated to you, it is not necessary for you to conclude that all of the overt acts have been proved to a moral certainty and beyond a reasonable doubt. It is sufficient to establish a conspiracy, if you so find, that one overt act was committed as a consequence of and following through the alleged unlawful agreement, if such agreement existed.

As I have indicated, an overt act need not be criminal in nature if considered separately and apart from the conspiracy. It may be an innocent act, as the act of a man walking across the street or driving an automobile, or using a telephone, but if during the existence of the conspiracy the overt act is done by one of the conspirators to effect the object of the conspiracy, the crime is complete, and it is complete as to every party found by you to be a member of the conspiracy, no matter which one of the parties did the overt act.

I charge you, ladies and gentlemen of the jury, that participation in a conspiracy without knowledge of its existence or knowledge of a conspiracy without participation therein is not sufficient to warrant a conviction.

You are further instructed that the declaration or act [177] of a conspirator not in furtherance or execution of a proven common design is not evidence against any of the parties other than the one making such declaration or performing such act.

The testimony of an accomplice or a co-conspirator, or evidence of oral admissions of a defendant, must be received by you with caution. I have already indicated that to you in part. I reiterate again that proof of the conspiracy charged in the indictment against the defendant De Bon must be made independent of admissions of any defendant made after the termination of the alleged conspiracy.

The rule of reasonable doubt which I have adverted to applies to every material element of the offense charged in the indictment.

One further instruction, that in order to find the defendant Ed De Bon guilty on the first count of the indictment, the so-called conspiracy count, you must find beyond a reasonable doubt and to a moral certainty that Mr. De Bon had knowledge of the other defendants' fraudulent plan or scheme in the preparation and presentation of the applications or mail orders alleged in that count. You must further find to a moral certainty and beyond a reasonable doubt that defendant knowingly joined in said illegal conspiracy.

You are instructed that even though two of the former defendants in this case, that is, Oscar Csaki and John Hildebrand, have entered pleas of guilty to one or more of the counts [178] of the indictment, that the pleas of guilty of those defendants are not evidence of the guilt of the defendant De Bon in the present trial.

The defendant, Mr. De Bon, has offered evidence of good character in his business dealings within this community, and with respect to his integrity. This is evidence for you to consider, together with all of the other evidence in the case in determining whether it has been proved beyond a reasonable doubt that the defendant committed the offense charged in the indictment.

You are further instructed that in order to find the defendant, Mr. De Bon, guilty of counts 2 and 3, or both, you must find beyond a reasonable doubt and to a moral certainty under all of the instructions given to you by the court that the defendant De Bon knew of the alleged illegal intent on the part of Mr. Hildebrand and Mr. Csaki to fraudulently prepare and present the applications or mail orders referred to.

Now, those two counts, ladies and gentlemen, so there may be no confusion in your minds, are completely divorced from the so-called conspiracy. They are what we regard in law as so-called substantive offenses, and I shall read them to you: That on or about July 8, 1946, the defendants, in the City and County of San Francisco, State of California, and within the jurisdiction of this court, did knowingly

and wilfully make and cause to be made false, fraudulent, and [179] misleading statements and misrepresentations, and did conceal and cover up by scheme and device a material fact in a matter within the jurisdiction of a department and agency of the United States Government, to wit, the War Assets Administration, in that the defendants—in this instance De Bon—did cause to be executed a mail order request for the purchase of surplus property, to wit, the purchase of a Chevrolet truck purported to be for the use and benefit of a veteran of World War II, one Oscar Csaki, when in truth and in fact it was the intention of defendant to purchase the Chevrolet truck for the use and benefit of defendant Ed De Bon, who was then and there not legally entitled to purchase said property.

Now, I have read to you the essence of the indictment. Count 3 is identical in all of the charging parts, save and except that it has to do with the White trucks referred to, rather than the other truck.

In every crime there must exist a union or joint operation of act and intent, and for a conviction both elements must be present, and be proved to a moral certainty and beyond a reasonable doubt. Such intent, as I have indicated to you, is merely a purpose of willingness to take such an action, and does not require any knowledge that such act is a violation of the law. However, a person is presumed to intend all that which he voluntarily and wilfully does in fact do, and must also be presumed to intend all of the natural, probable, [180] and usual consequences of all his own acts.

Now, save for a final instruction, ladies and gentlemen, I believe that I have covered every phase of this case, so far as the law is concerned, and as I indicated to you with finality, it is your obligation to arrive at a verdict if you can conscientiously do so.

You should freely consult with one another in the jury room. If any one of you should be convinced that your view of the case is erroneous, do not be stubborn and do not hesitate to abandon your own view under such circumstances, if you believe, after full and complete and fair discussion, you are erroneous. On the other hand, it is entirely proper and within your province to adhere to your own view if after a full exchange of ideas you still believe that you are right.

The indictment, as I have indicated several times, contains three counts. Each count must be considered by you as separate and several charges against the defendant, and according to such view as you take of the evidence you shall return a verdict of either guilty or not guilty as to each count.

Your verdict—and I ask that you heed this—must be unanimous in these counts.

When you retire to your jury room to deliberate you will select one of your number as foreman or forelady, and he or she will sign your verdict when it has been reached, and will preside over your deliberations in the jury room; and further, [181] your foreman or forelady will communicate, if occasion arises, with the court through the marshal,

who will be in charge of you during your deliberations. Your foreman will represent you as spokesman in any matters that have occasion to be brought to the attention of the court. The clerk will hand you the form of verdict.

Mr. Marshal, you will conduct the jury to their jury room and preside over them during their deliberations until a verdict or such action as they may take.

Are there any exceptions to the instructions?

Mr. Tramutolo: No exceptions, but I desire to have the jury retire. I think I can clarify this. There may have been a misunderstanding.

The Court: Mr. Tramutolo, if you have any exceptions to the instructions, under the rule they must be made out of the presence of the jury. If so, I will ask the jury to retire momentarily and then be recalled.

Mr. Tramutolo: Thank you, your Honor, it will be very short.

The Court: Ladies and gentlemen, under the rules Mr. Tramutolo is obliged to undertake on behalf of his client to note any exception to the charge of the court that he may have, and in the very nature of things, the law contemplates the absence of the jury, so I will ask you to retire momentarily, and then you will be returned to the court. There may or there [182] may not be further instructions, but you are not to take up your deliberations, so you are not to deliberate and discuss the case until I finally end it and hand it to you. You understand that.

(Thereupon the jury retired from the courtroom and the following proceedings were had:)

Mr. Tramutolo: Your Honor, the one on which I wanted to address myself to the Court, and it may have been covered while I was writing, is the weight the jury must give to those who have pleaded guilty. I got just one portion of it, and I don't know whether the jury was instructed that their testimony should be viewed with caution because of the fact that they had pleaded guilty.

The Court: I have given that instruction with respect to the accomplices, and I feel it is covered.

Mr. Tramutolo: The only other one, your Honor, I thought I had prepared for your Honor, was that it is not a violation of this Act to purchase property from a veteran when he acquires it himself, lawfully. In other words, there is no penalty in the Act.

The Court: Well, there is no such charge. There is no issue. You have argued that point to the jury, and I think very adequately, and you proposed no instruction on that situation and caution.

Mr. Tramutolo: I thought I proposed the one. That was [183] the one I wanted to ask about.

The Court: No, there was none proposed. I noticed you argued it very fluently and adequately.

Mr. Tramutolo: Then I have no other exception.

The Court: It has not been altogether an easy case, but I tried to eliminate any confusion.

Mr. Tramutolo: I appreciate that, sir.

The Court: Will you recall the jurors?

(Thereupon the jury was returned to the courtroom and the following proceedings were had:)

The Court: Ladies and gentlemen of the jury, you may now retire to your deliberations. The case is in your hands. I know that you will give it the consideration fairly and under the law as announced by the court, and under your oaths. That is all. You may retire.

(Thereupon, at 2:25 p.m., the jury retired to deliberate and at 4:10 p.m. the jury returned to the courtroom and further proceedings were had as follows:)

The Court: Ladies and gentlemen of the jury, the court desires to express to you a note of apology to the extent that upon the submission of the question through your foreman, Mr. Baldwin, and at the time it was presented to me by the attaches of the court I was engaged in disposing of a criminal calendar and was preoccupied to that extent, and subsequently to that I had counsel, both for the United States Government and Mr. [184] Tramutolo, for the defendant, in conference in chambers in connection with the several inquiries you have made to me in memorandum form, and after discussion with counsel and the court it has been agreed that the following answers and procedure be adopted in answer to your queries.

Question No. 1 as submitted to the court is: What constitutes a licensed veteran dealer? With respect to the use of the word "licensed" it is en-

tirely irrelevant in this case. I believe that the word "licensed" crept in during the course of the testimony of Hildebrand. A licensed operator or dealer might well be one licensed by the municipality or by the State of California, but in contemplation of the Surplus Property Act of 1944 there is no one designated as a licensed dealer. Provision is made, however, for a veteran who may well be occupied as a dealer. The law is not defined in any place so far as we are able to examine with respect to a definition of a veteran dealer, and in that respect I shall read to you briefly a regulation adopted under the Surplus property Administration. As I announced to you before, the over-all act, the War Surplus Act, contemplates implementation, and it was implemented in part 8307, Preference for Veterans. This regulation is dated October 10, 1945, and provides:

"Preference. Veterans shall be given a preference subordinate to the rights of Government agencies and State and local governments to purchase surplus property [185] for use in their own small business, agricultural, and professional enterprises."

Now, stopping for the moment, you will note that the regulation provides for the use of property in their own small business, agricultural, and professional enterprises. To that extent a veteran would be regarded as a dealer in his own business, and we must be mindful that many veterans returned from overseas who were desirous of re-engaging in a business comparable to the business they left; and some

veterans were in the automotive business, and to that extent the law in its wisdom provided that those persons could rehabilitate themselves and re-establish their business up to a maximum point, I believe, between 25,000 and 50,000. Mention was made by the witness of 25,000.

Now, "Such preference shall extend to property necessary to establish and maintain their own small business, agricultural, or professional enterprises, and within reasonable limits commensurate with the enterprise established or to be established, and in commercial lots appropriate to the level of trade."

Now, there you have your lines of demarcation. You have your over-all line. There is no fixed definitive. The regulation merely provides, "within reasonable limits commensurate with the enterprise established," and so forth, and I presume the Administrator could allow a certain amount of material commensurate with the limits it provides. [186]

Then the regulation provides:

"To one initial stock of property to be resold with or without processing or fabrication in the regular course of business."

Now, again in passing I pause to comment on the phrase, "the regular course of business," in connection with resale or reprocessing.

"In order to accomplish equitable distribution, the Smaller War Plants Corporation in collaboration with the disposal agencies and with the approval of the Administrator may establish minimum and maximum limits as to

the value and quantity of property which may be purchased by preference by any veteran."

Now, I believe that section of the promulgation is clear. It is clear in the court's mind, and I assume it may be clear in your mind, bearing in mind that a regulation cannot encompass every conceivable situation in the regular course of business, and discretion is reposed in the Administrator in connection with the preference.

During the course of my general instructions and before you retired for your deliberations, I had occasion to discuss with the jury the philosophy underlying the Surplus Property Act of 1944, and we must give recognition to the philosophy underlying that Act in order to arrive at your ultimate questions. [187]

The Surplus Property Act of 1944 is embraced in Title 50 of the United States Code, Section 1611, and reads in part as follows:

"Congress hereby declares that the objectives of This Act are to facilitate and regulate the orderly disposal of surplus property so as"—then the objectives—

"1. To afford returning veterans an opportunity to establish themselves as proprietors of agricultural, business and professional enterprises;

"2. To assure the sale of surplus property in such quantities and on such terms as will discourage disposal to speculators or for speculative purposes."

We now must advert to the regulation. The regulation clearly provides the express terms—in express terms, that provision be made for veterans in the regular course of business, and jurors, as well as the courts must be mindful that if preference were to be dealt in in an unbridled fashion the very spirit and purpose of the Act would be thwarted and defeated, for the simple and obvious reason that the veteran's preferences would be dealt in wholesale from hand to hand, and from hand to hand.

I am seeking to impress upon you the law as I gather it, and do not intend to convey to you any impression I have about this case. Under Section 1625 of the Surplus Property Act it is provided: [188]

“The board shall prescribe regulations to effectuate the objectives of this Act to aid veterans to establish and maintain their own small business, professional, or agricultural enterprises, by affording veterans suitable preferences to the extent feasible and consistent with the policies of this Act in the acquisition of the types of surplus property useful in such enterprises.”

There you have the underlying provisions of the Surplus Property Act, and you have the regulation under it.

Now, to proceed to the question you presented. No. 1, What constitutes a licensed veteran dealer? That question is moot, because there is no such person as a licensed veteran dealer within legal contemplation.

2, Was Mr. Hildebrand an authorized veteran dealer at the time of the sales to Mr. De Bon? The answer to that is Yes, according to Hildebrand, he was a dealer. You may recall his testimony that he had been in business with a gentleman in Los Angeles, or Bakersfield, that Hildebrand had exhausted all of his priorities, and having exhausted his priorities he then sought refuge in the priorities of Mr. Csaki. Hildebrand did not use, admittedly, any of his priorities. It was Csaki's priority or priorities used in the consummation of the transactions before the court and jury as embraced in the indictment.

The third question is, Can a dealer buy on a veteran's [189] priority and sell to a non-veteran on a commission basis? That involves a mixed question of law and fact, and I regard the answer to that as completely removed from this case, because the transaction as elicited through the medium of the witnesses is either one thing or the other. Two witnesses took the stand, Csaki and Hildebrand, and admitted before the court and jury that they had entered into a fictitious transaction, a mere figment, a colorable fiction. Hildebrand had used the priorities of Csaki in the accomplishment of a scheme and trick and device perpetrated upon the War Assets Administration, and in turn the United States Government. They entered pleas, as has been pointed out to the jury and the court, of guilty. They stand before the court and jury as guilty participants in that enterprise. There is no question about that. The transaction affecting the Chevrolet and the trans-

action affecting the three White trucks were fictitious transactions, and were accomplished and consummated as a result of the scheme or trick or device perpetrated, and you may recall that I instructed you fully under the terms of Title 18, Section 80, as to what constituted the scheme or stratagem or trick or device.

The gravamen of this cause is not bottomed or predicated upon any sale. If there be a fraud perpetrated, it is in connection with the mail order sent to the War Assets, and other features of the transaction. No opprobrium attached to [190] the alleged sale. The ultimate question then posed before the court and jury is this: Mindful that Hildebrand and Csaki entered into an unlawful transaction and a conspiracy themselves to violate the law, wherein they stand before this court and jury admittedly guilty, the first question is: 1, Did the defendant De Bon have notice and knowledge of what is admittedly as between Csaki and Hildebrand a fictitious transaction? Did he have that notice and knowledge? That is a fact for you to find in light of all the evidence and in light of the instructions given to you by the court.

2. Did he have the intent? And you may recall I indicated to you that the consummation of a crime must perforce be act plus intent. Did he have intent in the contemplation of the law as defined in my instructions to become part and parcel as an active participant in the scheme or artifice whereby the trucks were acquired by Csaki and Hildebrand?

Do I make myself clear, ladies and gentlemen? The sole question for you to determine when you retire to the jury room, in light of all this law—I realize that you have been given quite a load of law to carry with you, and I am mindful that the War Surplus Commodity Act has not been interpreted on many occasions before courts and particularly before juries, and I dare say this is the first time in recent date this problem has been posed before a jury—so therefore feel free immediately to ask me any questions concerning it, and if I am able [191] I will answer.

Then the question of notice and knowledge enters into this transaction. Did De Bon have that notice and knowledge in contemplation of law necessary to bring a verdict? Appropriate now are the doctrine of reasonable doubt and the doctrine of presumption of innocence which I have given in my previous instructions. In considering whether he had notice and knowledge, you may in your mind process the transactions mentally and define them. There was not one transaction. There were several. The first was that of the Chevrolet. After that was consummated the evidence shows that Mr. De Bon delivered to Hildebrand a sum of money, I think \$50 or thereabouts, in consideration for the acquisition by Hildebrand of the truck in question or the paraphernalia in question. Thereafter there was a second transaction involving the White trucks. Subsequent to that there was a payment by Mr. De Bon of cash.

Consider now in the light of Mr. De Bon's testimony denying that he had knowledge or notice of

any fictitious transaction, and in the light of all the facts and circumstances it is for you to determine. That is your province. I rest it with you. Are there any further questions?

A Juror: If Mr. Hildebrand was a dealer, couldn't it be construed that a dealer is entitled to a commission for sale? [192]

The Court: A dealer can deal in his own properties as such, but bear in mind in this case that Mr. Hildebrand was not dealing in his own priorities. Mr. Hildebrand was dealing in Csaki's priorities.

The Juror: What I mean is an innocent purchaser purchasing and paying commission, wouldn't that or couldn't that be constituted a commission instead of——

The Court: That is for you. I am not to pass on that, sir. That is a matter for you to determine in the light of all the facts in this case.

The Juror: That is the reason we wanted to know what a dealer was.

The Court: I have defined it as best I can. I have given you the definition. I have read the Act.

The jury may retire for further deliberation.

(Thereupon at 4:32 the jury retired for further deliberation. At 9:13 p.m. the jury returned to the courtroom with a verdict of guilty as to the first count, not guilty as to the second count, and guilty as to the third count, following which the jury was polled and discharged from further consideration of the case.) [193]

CERTIFICATE OF REPORTER

We, Allen Mack and F. J. Sherry, official Reporters, certify that the foregoing 151 pages is a true and correct transcript of the matter therein contained as reported by us and thereafter reduced to typewriting to the best of *my* ability.

[Title of District Court and Cause]

REPORTER'S TRANSCRIPT

September 26, 1947

The Clerk: United States of America v. Hildebrand, Csaki and De Bon for judgment.

The Court: The defendants are before the court represented by respective counsel. Do you gentlemen have anything to say at this time as to why judgment and sentence should not be pronounced?

Mr. Tramutolo: No legal ground.

Mr. Pothier: I would like to speak on behalf of the defendant Csaki, his past, briefly.

The Court: You may.

Mr. Pothier: I have not, of course, had the opportunity to see the probation report, but I am confident that with the exception of the incident with which we are here involved that it is entirely favorable. His background and character, I am sure, are above reproach. As your Honor knows, he was a veteran through the full period of the war and prior to the war saw active service and had been in no difficulty of any kind at all, and I think I can safely

proceed to the consideration which Judge Goodman has said was the province of the Court as distinguished from that of the probation officer, and that is the offense that has been presented in the evidence to your Honor, because I hope I am correct in saying that the report discloses that this defendant certainly is not of criminal temperament or has a background which will indicate that any type of offense is likely to be repeated. As to the offense before the Court, all I would say to your Honor is that the file will disclose that the government, in recommending the acceptance of a plea of *nolo contendere*, as applied to this defendant, advised the Department that in this case he was a dupe in the transaction. I hope your Honor will not misunderstand me; I am not distinguishing between *nolo contendere* and guilty. I realize we are here with the same consequences of a guilty plea. But the reason behind the Department's attitude, I think is important, and I think the evidence does show he was a dupe. Certainly there was no plan or conspiracy between him and anyone else to get a series of priorities and make money off of them. I am sure your Honor is satisfied with that. He was a simpleton and a weakling. That is the way I would put it.

I know the two features that stand out in your Honor's mind, as you indicated at the trial, with respect to this defendant. There was a certain amount of money that he received, and there may have been some ambiguity in the testimony as to his consciousness of wrong-doing. I think there is some misunderstanding on your Honor's part. There

was in that respect. As to the money which he received, the one item of \$20 and one of \$125, which were paid to him for the use of his priorities, and which, according to at least one of the defendants' contentions, was properly paid, that was something that was done for his time and effort. I think it is perfectly clear from his entire conduct he was aware that what he was [196] doing was wrong. He objected from the start. He was happy to present the full matter to the investigator when he was apprehended. He did testify he did not know he was committing a legal wrong-doing. Even counsel, perhaps the Court, has some question as to whether this type of transaction is a legal wrong-doing. I think he is entitled to answer on that matter, but there is no question in his mind it was a moral wrong-doing and he submits himself to the mercy of the Court. I think he is entitled to receive that mercy.

Mr. Tramutolo: Your Honor, in behalf of Ed De Bon, I am still convinced—and I say this with all sincerity—that I do not believe that the verdict of the jury was a correct verdict. I say that with all due respect because it was a new jury, and the reason I say that, your Honor, is that this man is very well known in Northern California and throughout the State. I have personally known him for many, many years. I have never known Ed De Bon to do anything that would harm anyone. I know of his acts of kindness and acts of charity because I have known him over this period of years. I can't get through my mind that here is a man who had been dealing with War Assets on credit, having

bought, your Honor, I think more than a half million dollars of property from the government—there is no need for him to resort to subterfuge for any acts such as is charged in this indictment. However, that question was submitted to the jury and the jury has returned its verdict and found [197] contrary to his belief or his testimony and my opinion.

Your Honor, also I cannot get through my mind or understanding how a man would require notarized bills of sale from Csaki to himself. He never knew Csaki, never met Msaki until the day of the transaction, July 8, and that is subsequent to the three White trucks. He had in his employ and still has a number of veterans. If there has been any desire to resort to any misrepresentations or subterfuge or trying to circumvent any law, certainly he could have done it with his own employees, having them make application and procuring those trucks or anything he needed in the motor line and then purchased them then. There is the further fact, as your Honor well remembers, that application for all this material was made several months before Hildebrand and De Bon met.

Since this conviction, of course, it has affected him physically and of course morally in the community. His business has suffered. He has lost his agency, his motor agency for the automobile line he was handling, partially due to this. He has been in the motor business for many, many years.

Then, in addition to that, your Honor knows as well as I do when it is found out as to the amount of these trucks or what was due to the government

for acquiring these trucks he obtained these various cashier checks made out to him and endorsed over to War Assets. Your Honor would be viewing the entire testimony if I were to continue, because you are as [198] familiar with it as I am. I think this man is entitled to your earnest consideration for leniency.

The Court: He had transactions with one Jack Chastein, although he was not tried on that theory. It appears there were transactions of a similar nature.

Mr. Tramutolo: Your Honor, the Jack Chastein matter I do not recall. I think Chastein bought a truck. The truck was too large for the purposes for which he used it, the contract that he had, I think, in Northern California was terminated, and Jack Chastein had no one else to dispose of the truck to. He had purchased it and used it for a period of months, and because it was not adaptable for his contract purposes and because the contract, I believe, terminated—it was a gravel truck—he sold the truck to De Bon. He consigned it for sale, and De Bon sold it for him because he had the medium of selling.

I do not know what to add, your Honor. As I say, I cannot get through my mind that there is a violation of this Act because the evidence in my opinion never bore it out, and there could have been no motive for him to do the thing with which he is charged, because he could have waited and those trucks could have been procured by him as a dealer at considerably less expense, because the telephone

truck had to be dismantled, and I think I have submitted to the probation officer the over-all cost to him, and the one truck purchased from Hildebrand with which he is charged and still has in his [199] possession, if it is not sold, his loss will be an overall loss in excess of \$2300. If he does sell it, it will be that much less.

Mr. Haughey: Anything that I might say, your Honor, would be purely repetitious. You have before you a report. Your Honor can see from reading the files of the probation department that this young man, 27 or 28 years of age, father of two children, a veteran of approximately four and a half years' service, commended by his superior officers, has a background, if your Honor please, that I think entitles him to the utmost consideration from your Honor. In addition to that, it was his sole business venture, that is, his sole enterprise is now coming to an end. He has lost his lease. He has lost his investment in a service station across the Bay. He has to vacate the premises on October 1st. The young man is without a job, without any income, and he has two children to support. The last was born June 19 of this year. I think the defendant's whole attitude in this thing has been open and aboveboard. He has come out and he has told the department, the investigative department of the government, everything that took place. He has cooperated fully. I must repeat once more, if your Honor please, this defendant is entitled to your utmost consideration.

The Court: All right, gentlemen. The matter may be submitted. I have received from Mr. Wahl the probation report [200] and I need not add that it is comprehensive, as all his other reports are. He has given me the full details and background, which the Court sometimes is not in a position to obtain.

In respect to the defendant Csaki, he, as counsel points out, is less culpable than the others. Hildebrand likewise has an enviable record. This boy has a good general record. He has been with the Emporium upwards of ten years and he holds a position of trust and confidence. He claims he went into the transaction unwittingly, that he did not realize the legal culpability. That may well be. At the same time he entered a plea of *nolo contendere*, with the consent of the Attorney General, and aided the government in all respects in the prosecution of this cause. I feel that he is entitled to consideration. He entered a plea of guilty to the first count, *nolo contendere*.

Mr. Pothier: Yes, your Honor.

The Court: The other two counts are dismissed. Accordingly, as to the defendant Csaki, it is the judgment and sentence of the Court that he be fined in the amount of \$250.

With respect to the defendant Hildebrand, John Stephen Hildebrand, I have read his general record. He has letters on file from his superiors demonstrating that he was commended; a special commendation with respect to his service, was given him. He did know the operations, however, within the particular department. He had been conversant with

them. It was he [201] who formed the contact with De Bon. He claims, however, and claimed during the course of the trial, that he had a wholesale veteran's priority. He thought he could do business under those circumstances. However, I think he realized, as did the jury, that the transaction was a tolerable one and a pure fiction.

Now, adverting momentarily to Mr. Tramutolo's remark concerning the trial itself, I think this jury was what might be regarded comparatively as a new jury. The case was thoroughly tried. I believe I thoroughly instructed them, I think they understood thoroughly the evidence as applied to the law, or the law as applied to the evidence. I might add, however, that as far as I can determine, this is the first prosecution of its kind.

Mr. Bonsall: It is, your Honor.

The Court: I have asked Mr. Bonsall if he had any criteria, any basis that might afford the Court a yardstick in this case.

Mr. Bonsall: There is no change to date, your Honor.

The Court: You have no such authority and I could not find any. Therefore, we have to sort of hew our own paths in the trial of this case. Mr. Tramutolo has pointed out to this Court that these transactions are widespread throughout the country. Of course, I cannot bring myself in consonance with that. That might well be. As far as the prosecution is concerned, [202] I believe the jury reached the only verdict they could possibly reach.

There are factors in extenuation so far as the defendant is concerned. I could not conceive of sending this man to the county jail, and I think Mr. Wahl in our discussion, as well as in his report, so concludes; am I correct, Mr. Wahl?

The Probation Officer: That is right, your Honor.

The Court: I think he probably has suffered to an extreme thus far. He hasn't any prior record of any kind, character or description.

Mr. Bonsall: No, your Honor.

The Court: John Hildebrand, are you ready for sentence?

Mr. Hildebrand: Yes, sir.

The Court: It is the judgment and sentence of this Court that you be confined in the county jail for a period of three months, which sentence I will suspend and grant probation and in addition, you will pay a fine to the United States Government in the amount of \$500.

Mr. Haughey: May we have a 72-hour stay of execution, your Honor, for the payment of the fine?

The Court: Yes.

Mr. Haughey: Thank you.

The Court: Now, as to the defendant De Bon, the report of the probation officer reaches a conclusion that De Bon is not entitled to probation. There are many factors in reaching that [203] conclusion which I need not dilate upon. I feel that the ends of justice would be served as to De Bon, however, by a fine commensurate with the gravity of the offense. He claims he lost money in the transaction.

I cannot believe that. Although arithmetic computations were set before me, I am satisfied that Mr. De Bon was in the transaction on a profit basis and with a profit motive. I feel, however, that this case did present in its trial features complexities. Mr. Bonsall, am I correct?

Mr. Bonsall: That is correct, your Honor.

The Court: And I feel that it being a case of first impression that this Court should be accordingly to a degree temperate.

De Bon in one phase of the case presented evidence that was somewhat convincing, and yet ruled against him by the jury as well as by the Court on your own motions, and that is, De Bon went to the bank and received these certified checks, presenting them openly, without any attempt at reservation or circumvention. Now, that conduct in and of itself seemed to justify the conclusion that he was acting as an innocent man. I ruled against your contentions, Mr. Tramutolo, on your motions and I rule against them now, and yet as a fact it stands out to some degree like a beacon of light to me. Accordingly, I do not feel that this man should be sent to the county jail. He perhaps has suffered in his business relations far beyond any punishment [204] I could mete out. You tell me he has lost his agency?

Mr. Tramutolo: Yes, he has, your Honor, partially due to the trial and the department, in addition, has said to screen everything he has done, and he has little or no chance.

The Court: I have read letters in the file from other departments that the man has been honest in his dealings.

Mr. Tramutolo: He purchased over a half million dollars of equipment from the government, and he owes the government today \$40,000, which must be paid, and he owes the Bank of America some \$30,000.

The Court: He has a minor offense reflected by the FBI report that I have in mind. Are you ready for sentence?

Mr. De Bon: We are.

The Court: Ed De Bon, it is the judgment and sentence of this Court as to count 1, under which the jury gave a verdict of guilty, that you be confined in the county jail for a period of six months, which sentence the Court will suspend and grant probation for a period of two years, and on count 1 you shall pay a fine to the United States Government in the amount of \$2500.

The jury returned a verdict of guilty as to count 2 and guilty as to count 3. The jury found you guilty thereon, and accordingly it is the judgment and sentence of this Court that you pay a fine to the United States Government in the amount of \$2500, the judgment and sentence to run consecutively.

Mr. Tramutolo: Will your Honor give me a week's time in that matter?

The Court: A stay of one week.

Mr. Tramutolo: A stay of execution as to De Bon until October 3.

If your Honor please, may I ask instead of the 3rd that it be taken on any other date after the 3rd? I will not be here.

The Court: Any date agreeable with the calendar.

The Clerk: It is purely a routine matter of paying it over to the Clerk's office, your Honor.

Mr. Tramutolo: Put it on for Monday, the 6th.

CERTIFICATE OF REPORTER

We, Official Reporters, and Official Reporters pro tem, certify that the foregoing transcript of 13 pages is a true and correct transcript of the matter therein contained as reported by us and thereafter reduced to typewriting, to the best of our ability.

/s/ J. J. SWEENEY.

[Endorsed]: No. 11841. United States Circuit Court of Appeals for the Ninth Circuit. Ed De Bon, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed January 26, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11841

ED DE BON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL

The appellant Ed De Bon intends to rely upon the following points on appeal herein, to wit:

The trial court erred in denying appellant's motions for his acquittal made at the conclusion of the prosecution's evidence and at the conclusion of the testimony and his motions in arrest of judgment and for a new trial and the denials thereof and the verdict of guilty, the judgment of conviction and the sentences and fines imposed upon him are contrary to law and to the evidence for the following reasons, to wit:

(1) The indictment does not state facts sufficient to constitute a public offense;

(2) No evidence linked him with the purported commission of any of the crimes charged in the indictment or showed or tended to show he had knowledge of the conspiracy charged in count one or of the crime charged in count three of the indictment

or that he had any intent to commit any such crime or crimes or that he was guilty of the commission of any crime charged therein;

(3) The charges contained in the indictment, the verdict of guilty on counts one and three and the judgment of conviction, sentences and fines imposed upon him thereon are void for placing him in double jeopardy, in violation of the provisions of the 5th Amendment, and the sentences and fines imposed upon him are void for being duplicitous and excessive, in violation of the 8th Amendment;

(4) Counsel for the prosecution was guilty of misconduct in arguing to the jury that the appellant was guilty of conspiracies other than the one charged in the indictment and the same was prejudicial to his substantial rights, materially affected the same and deprived him of a fair trial in violation of the provisions of the 6th Amendment and the due process clause of the 5th Amendment;

(5) The trial court erred in admitting immaterial evidence and in excluding material evidence, over appellant's objections, which deprived him of a fair trial and resulted in a miscarriage of justice;

(6) The trial court erred in refusing to give to the jury certain instructions proposed by appellant among which were instructions to the effect (1) that it was not a violation of the Surplus Property Act for one to purchase property from a veteran who lawfully has acquired such property and (2) that the testimony of co-defendants who had pleaded guilty to the charges in the indictment should be viewed with caution and distrust;

(7) The trial court erred in instructing the jury, and among other instructions erroneously given, in answer to inquiries put to the court by the jury, erroneously instructed them, in substance and to the effect that, (1) there was no such person as a "licensed veteran dealer" within the purview of the Surplus Property Act, (2) that the prosecution's witness, John Steven Hildebrand, did not use any of his priorities and (3) that the question whether or not a dealer could buy on a veteran's priority and sell to a non-veteran on a commission basis was not involved as an issue in the case.

The appellant designates the whole of the record to be necessary for the consideration of the points upon which he intends to rely on his appeal.

Dated February 27th, 1948.

/s/ CHAUNCEY TRAMUTOLO,
Attorney for Appellant.

Receipt of a copy of the foregoing Statement of Points is hereby admitted this 27th day of February, 1948.

FRANK J. HENNESSY,
U. S. Attorney.
By /s/ EDGAR R. BONSALL,
Assistant U. S. Attorney.

[Endorsed]: Filed Feb. 27, 1948.

[Title of Circuit Court of Appeals and Cause.]

APPLICATION THAT COURT EXAMINE
AND CONSIDER ON APPEAL THE ORIG-
INAL EXHIBITS INTRODUCED AT THE
TRIAL WITHOUT REPRODUCING IN
RECORD

The parties hereto hereby jointly request the Court to examine and consider on the issues involved in the appeal herein the original exhibits offered and introduced into evidence at the trial below without reproducing the same in the record herein.

Dated February 27th, 1948.

FRANK J. HENNESSY,

U. S. Attorney.

By /s/ EDGAR R. BONSTALL,

Assistant U. S. Attorney,

Attorneys for Appellee.

/s/ CHAUNCEY TRAMUTOLO,

Attorney for Appellant.

So Ordered.

February 28, 1948.

/s/ WILLIAM DENMAN,

United States Circuit Judge
Presiding.

[Endorsed]: Filed Mar. 1, 1948.





